TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1987

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
NINETY-NINTH CONGRESS
SECOND SESSION

SUBCOMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS

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PART 3
EXECUTIVE OFFICE OF THE PRESIDENT AND PUBLIC WITNESSES

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TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, MARCH 19, 1986.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF POLICY DEVELOPMENT

WITNESSES

CHARLES D. HOBBS, DEPUTY ASSISTANT TO THE PRESIDENT AND DIRECTOR OF THE OFFICE OF POLICY DEVELOPMENT

RICHARD L. WILLIAMS, SENIOR STAFF MEMBER, OFFICE OF POLICY DEVELOPMENT

Mr. ROYBAL. The committee will now hear from the Office of Policy Development. Mr. Hobbs and Mr. Williams, I would like to welcome you to the committee this morning, and you may proceed in any manner you desire.

Mr. HOBBS. I am Charles Hobbs, Director of the Office of Policy Development.

Mr. ROYBAL. Please proceed.

Mr. HOBBS. This is my first time before the committee, also. I took the job in November. I will do my best to answer whatever questions you might have about our budget.

Essentially, we do three things: One is to develop long-term policy plans. The second is to develop short-term policy strategies for implementation; and finally, our third task is to monitor the implementation of that policy through the various departments.

We provide administrative support to the two cabinet councils for domestic policy, the Domestic Policy Council and Economic Policy Council.

These two have been consolidated from seven previous councils, and that consolidation has produced a revitalization of the Cabinet Council system, so these two are more active than the previous seven used to be.

We have within our organization the program office coordinating drug abuse policy throughout the Administration. The rest of us develop policy ideas for the long-term and strategies for short-term implementation.

We are requesting $2,665,000 for next year, and that represents a very small increase of approximately 2 percent over the budget we have for this year, after the Gramm-Rudman reduction.

In 1986, we took a $117,000 Gramm-Rudman reduction, and we have absorbed that fairly well because, at the beginning of the fiscal year, our staffing had diminished substantially. But we are now up to almost full staffing and feel that we can go into next year, and meet the budget request that we have presented.

I will answer any questions you might have.

[The prepared statement of Mr. Hobbs follows:]

Revised--March 19, 1986

Statement of Charles D. Hobbs
Deputy Assistant to the President for Policy Development
and Director of the Office of Policy Development

For the Subcommittee on Treasury, Postal Service,
and General Government, Committee on Appropriations

U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee,

This my first time in appearing before your committee to present the budget request for the Office of Policy Development in the Executive Office of the President. I welcome the opportunity to meet with you and to explain the current operation of my office. The Office of Policy Development is responsible for advising and assisting the President in a wide range of issues and for supporting the cabinet-level bodies designated as the primary channels for advising the President on policy matters. The budget of $2,665,000 requested for Fiscal Year 1987 is for the salaries and expenses necessary to meet these responsibilities.

During the past year we have made some changes in the White House policy development process. In April of 1985, the previous seven Cabinet Councils were replaced by two new cabinet-level bodies -- the Economic Policy Council and the Domestic Policy Council. The President chairs both Councils. The Economic Policy Council provides advice on all aspects of national and international economic policy. The Domestic Policy Council provides advice on domestic and social policy. The Office of

Policy Development makes input to and provides administrative support for both Councils.

I am requesting 42 staff positions, the same number of positions as in the current year. The staff positions of the Office of Policy Development are used to support the two cabinet councils and to perform the formulation, evaluation and coordination functions necessary to guide long-range economic and domestic policy. We continue to work closely with the National Security Council in areas where domestic policy includes international considerations, and they, in turn, work with us. Within the White House staff structure, the Office of Policy Development reports directly to Mr. John A. Svahn, the Assistant to the President for Policy Development.

The Office of Policy Development also supports several other functions within the Executive Office of the President, including the offices of Cabinet Affairs, Drug Abuse Policy and the President's Economic Policy Advisory Board.

The President's Economic Policy Advisory Board is established by Executive Order. There are 13 members on the board and we pay the necessary travel expenses for these members to attend the Board's meetings.

Fiscal Year 1987 Budget Request

Our budget request for Fiscal Year 1987 is $2,665,000. Our budget for Fiscal Year 1986 was $2,726,000. After a reduction of $117,000 to meet Gramm-Hollings-Rudman requirements in Fiscal Year 1986, our available budget authority is $2,609,000. The increase of $56,000 requested in Fiscal Year 1987 will restore approximately half of the reduction. I intend to limit hiring and delay personnel actions to provide the necessary savings in both years. We will continue to be conservative in filling the available positions and will seek savings wherever possible.

Again, I welcome the opportunity to meet with the Committee and would like to thank the Chairman and the members for their support. I recognize that the excellent level of data processing capability of the Office of Policy Development is a direct result of the interest and support of this Committee. If I can be of assistance, please let me know.

I will be pleased to answer any questions you may have.

CHARLES D. HOBBS

Charles D. Hobbs is the Director of the Office of Policy Development. He has served on the White House staff since April 1984. From 1972 to 1984 he was President and Principal Consultant of Charles D. Hobbs, Inc., a California-based public policy and management consulting firm. His company served a wide variety of federal, state, and local government agencies in the development of public service programs and management plans.

Mr. Hobbs was Chief Deputy Director of Social Welfare in California from 1970 to 1972, and also served on then-Governor Reagan's tax limitation and local government task forces in 1973 and 1974. He was a delegate to the Economic Summit Conference on Inflation in 1975.

Mr. Hobbs designed and managed the development of computer-based information and command/control systems from 1958 to 1970.

He graduated from Northwestern University (B.S., 1955) and was a Woodrow Wilson Fellow at UCLA in 1958 and 1959. He was the distinguished military graduate at Northwestern in 1955 and served three years as an officer in the United State Air Force. He was born September 2, 1933 in Kansas City, Missouri and now resides in Arlington, Virginia.

March 1986

RICHARD LUCAS WILLIAMS

Richard L. Williams is serving as a senior staff member in the White House Office of Policy Development. His responsibilities include drug abuse policy analysis, organizational budget and management recommendations, advice on Federal drug law enforcement activities, and preparation of the National Strategy for the Prevention of Drug Abuse and Drug Trafficking.

He served in the United States Army for 21 years as an Infantry officer and Army aviator in a variety of command and staff assignments. He has military qualifications as senior Army Aviator for fixed wing aircraft and helicopters, senior parachutist, and comptroller. His Washington assignments included three years as Military Assistant to the Assistant Secretary of the Army for Financial Management, one year in the Office of the Chief of Legislative Liaison where he was responsible for liaison with the House and Senate Budget Committees, and two years in the Office of Management and Budget (OMB) on the Federal Drug Management staff.

Following his retirement from the Army in 1977, he joined the Office of Drug Abuse Policy as the Assistant Director for Drug Law Enforcement. He remained with the office when it was merged into the Domestic Policy Staff in March 1978 and continued as Assistant Director until he assumed his current responsibilities with the Office of Policy Development.

He is a 1956 graduate of Ohio University and a 1976 graduate of the Industrial College of the Armed Forces.

March 1986

DRUG ABUSE STRATEGY

Mr. ROYBAL. Mr. Hobbs, I notice that you are discontinuing the printing of the Federal Strategy for the Prevention of Drug Abuse and Drug Trafficking.

Mr. HOBBS. I don't think that the strategy is being discontinued.

Mr. WILLIAMS. Sir, that is in my area. The Federal Strategy, as you know, was expanded to a National Strategy in 1984, the last time we prepared it. Last year, we presented the committee with copies of the 1984 strategy.

The requirement for a strategy was in a statute that originally required a Federal Strategy each year. Then, in 1982, I believe, it was changed to require a strategy every two years, and then as we published the 1984 Strategy, the statutory requirement was repealed.

We debated publishing a new Strategy in 1986, because it is a very important document in providing direction to the national program. In discussing it with senior staff and Cabinet members, they felt that the President's 1984 Strategy was a top-notch document and was a suitable blueprint for the next several years.

Rather than muddy the water by trying to prepare a different document, we thought we would stick with a winning Strategy. Therefore, our office will not publish a new National Strategy in 1986.

Mr. ROYBAL. But drug abuse continues to remain the major national problem.

Mr. WILLIAMS. And we think, sir, that we have a good Strategy for it.

Mr. ROYBAL. So the 1984 Strategy apparently is not being implemented, or something is happening because more and more drugs are coming into this country.

Mr. WILLIAMS. The 1984 Strategy is being implemented. The nature of the Strategy is such that it takes several years to implement. As a matter of fact, that was the basic argument against preparing a new Strategy every year.

You never had time to really put the instruments in place, to get the tools operational to where they would have some effect.

Mr. ROYBAL. Yes, but there must be some very basic tools that are placed in operation regardless of the year in which the Strategy is designed.

Mr. WILLIAMS. Yes, sir, and we are continuing to work on implementing the five major elements of the 1984 Strategy.

Mr. ROYBAL. What does the 1984 Strategy mandate, or what does it recommend that is being implemented now that is solving the problem?

THE 1984 NATIONAL STRATEGY FOR PREVENTION OF DRUG ABUSE

Mr. WILLIAMS. The 1984 Strategy, the current Strategy, has five distinct elements. The first is international cooperation and control. The international program includes both the diplomatic activities and law enforcement activities overseas to reduce and hopefully eliminate production in source countries, and to eliminate trafficking organizations that are run by foreign nationals or outside the United States.

The second major part of the Strategy is the law enforcement portion. Drug law enforcement has two major elements; interdiction and investigation. Interdiction is an important element of supply control and includes both U.S. Customs activities, which have increased substantially since 1981, and the Coast Guard activities. With the Congress' help in 1981 in providing an exception to posse comitatus, we also had extensive military involvement in supporting both Customs and the Coast Guard in interdiction activities, both sea and air interdiction.

The second element of drug law enforcement is the domestic investigative activities. Again, there has been a major increase in resources, both in people and budget, including a major expansion of the FBI's activities in drug-related investigations. Prior to this Administration, the FBI did not investigate drugs. Drug trafficking cases were investigated by the Drug Enforcement Administration with some support by the IRS. Now, the FBI has become a major player in drug investigations.

The Attorney General is chairman, by statute, of the National Drug Enforcement Policy Board, which is a new organization which was created subsequent to the 1984 Strategy. I think the Board represents a giant step forward in managing this rather large increase in drug law enforcement resources. The establishment of the Board has the effect of putting what has been colloquially called a drug czar in charge of drug enforcement. More accurately, it is a Cabinet level group chaired by the Attorney General, which works with the Vice President and the President in coordinating drug enforcement policy and overseeing operations and budget decisions involving both the interdiction and the investigation functions.

The existence of the Board is a major change from the old system, and hopefully will allow those kinds of tradeoffs that have not been in the system before. Under this system, the interdiction forces should receive a fair share of the drug law enforcement budget.

The next major element in the National Strategy is prevention and education. The major thrust of our office for the past four years has been to create the understanding that the ultimate solution to drug abuse is preventing the user from starting or continuing to use illegal drugs.

We are not working to create a massive Federal capability for education and prevention—as a matter of fact, we tried that in previous Administrations, and we proved that the Federal Government was not very good at communicating with young children. So we have worked to encourage prevention activity in the private sector; corporate activity, community involvement and parent group activity. Mrs. Reagan has been a true star in generating the public support, in providing the leadership to get parents involved, to get schools involved, and I think there is some real progress being made in the youth area in reducing drug abuse.

The fourth major element of the National Strategy is treatment, and as follows, rehabilitation. Treatment is a step beyond prevention. Prevention is directed at those who have not yet started using drugs or have just begun experimenting with them. When prevention is not successful, treatment needs increase. Treatment and rehabilitation is a piece of the program directed at those people who are involved in drugs, and need help in getting out.

Prior to this Administration, much of the treatment activity was funded through the National Institute on Drug Abuse. At the beginning of the Administration, the Federal block grants were established. With the event of the block grants, money was provided to the States, and they decide how the money would be applied both by locality and to meet the particular treatment needs within each State.

That program is working very well, and the private sector support, the State and local government support and the non-government support for treatment has expanded considerably in the past several years.

The fifth element of the Strategy is drug abuse research. Drug abuse research is largely a Federal responsibility. We look at the causes of drug abuse and what kind of treatment works. The objective is to conduct the research necessary to support the other elements of the program.

I am sorry that is a long answer, but that is an outline of the National Strategy.

Mr. ROYBAL. I am glad you gave me that outline, because that is excellent. I sit on another sub-committee, the Sub-Committee on Health and Education, that deals directly with some of the problems that you are talking about, and we see very little evidence of implementation of this policy.

For example, no one can deny that the international control of narcotics is not working. In fact, we don't even control our own production of marijuana in this country.

I went to Hawaii not too long ago, and I was amazed to see how much marijuana is grown in Hawaii, and I was told, "Don't worry about Hawaii, worry about California."

I was also told that California, Hawaii, and Florida grow more marijuana than all the other States combined, including the marijuana that comes into the United States from other countries.

So it is not working. The matter of law enforcement, again in this sub-committee, we deal with matters of the Customs Service. Every year, the recommendation has been for a decrease in funding. Every year, we put back in that money and that personnel.

This deals with the interdiction of narcotics, and one cannot take care of the problem by reducing these funds, particularly when Customs as a revenue-producing agency continues to produce with the $700 million that we appropriate, $12.75 billion every year.

That is a good investment. Insofar as the FBI is concerned, I am not on that committee, so I don't have any knowledge of what the FBI is doing, but I do know something about the treatment and the help that is being made available, and I know that drug smuggling has increased substantially in the last three years, no doubt about that, which means that more and more of our youngsters in our junior high schools and high schools and college and from thereon, are using more narcotics today than they ever have before.

In talking to people in other countries and explaining about this, especially those in the Latin American countries, their answer has been if you didn't use it, we wouldn't have a market, and it wouldn't be sent. That is no reason for producing it. The next thing they say is if you are complaining about us, why don't you do something about your fields in California and in Florida and in Hawaii?

What I am getting at is that while all this is very good and makes a lot of good publicity, the truth of the matter is that we have lost the fight on narcotics. There are no two ways about it, and we are losing it every minute, and we have to do something more than we are doing now.

We are doing a lot of talking, a lot of shadow boxing, but we don't fight and really lick this problem, and I think we should. I am really worried about it; I don't worry about my children, they are grown up and married but my grandchildren are growing up, and your grandchildren are growing up, and there isn't a school in the whole country, private or public that is from the junior high school level and up, that hasn't had a problem with narcotics.

DRUG ABUSE IN THE MILITARY

Mr. **Williams**. That is true. But on the other side, there are some positive indications. In the late to the mid-seventies, and as a matter of fact, earlier in the sixties, there was great concern about drug abuse in the military. Part of our program has been to expand the drug abuse testing in the military, and to get very serious about trying to achieve a drug-free military force.

The military conducts a worldwide survey once a year, and we use that survey to keep track of the military programs. In 1980, the overall drug use, the people who have used illegal drugs within the past month, was running at 27 percent of our military personnel.

There was a lot of emphasis on testing, on identifying the drug users, and then trying to, first, clean them up, or if they wouldn't clean up, throw them out.

In 1982, that 27 percent had dropped to 19 percent, and I was very pleased to see that the preliminary results on the 1985 survey show that drug use is down further, to 9 percent.

Mr. **Roybal**. But this is a captive audience. This is a group of people in the military that are under complete orders, 100 percent under orders, that cannot be applied as a guideline to be compared to the rest of the population.

The youngsters are not under that kind of regimentation that go to these schools. These are the people we are worried about. We can take care of people in the military and those that are under military jurisdiction, but our other children, they are the ones that are in danger.

DRUG ABUSE BY YOUNG PEOPLE

Mr. **Williams**. May I explain that our prevention program, and Mrs. Reagan's prevention efforts have been directed very much at preventing drug abuse by young people. I personally have a deep dedication to that, because I believe truly that the future of our Nation is at stake if we continue with high drug use among our youth.

Mr. **Roybal**. So do I. This is why I just can't understand why the recommendation coming from the President is always to reduce a Department of the Federal Government that has so much to do with interdiction of narcotics. I just can't understand it.

Mr. **Williams**. Again, if we could look at a few positive things. We started in 1981 focusing on youth. I have been involved in the drug program for quite a number of years, and the government, as I mentioned, was just not very good at communicating with youth. Also there was a lot of popularity associated with drugs and peer pressure to use drugs in the schools.

And we took a serious cut at doing something about that in 1981 and recieved a great deal of cooperation from corporations like Keebler, IBM, and others. So far, one effort has produced over 5 million comic books which the private organizations have paid for, and we have distributed them to 35,000 elementary schools, covering the 4th, 5th and 6th grades. The messages in the youth program is the exact opposite of the "responsible use" perceived to be the youth message in the seventies. Our message is clear; no drug use. Drug use is unacceptable.

Of course, with Mrs. Reagan's spectacular success in this area, I think on the youth side that things are much brighter. The Gallup youth survey shows that marijuana use is down. In 1972, 27 percent of the youth surveyed were using marijuana within the past 30 days. In 1985, the survey shows that use had dropped to 8 percent. The really important thing, which I think is going to make a major difference over the next few years is that attitudes are clearly against drugs.

Another of the subjects that the Gallup Youth Survey and a number of other surveys address is the teenager's perception of drugs, are they good or are they bad; is it a good thing to do, or is it a bad thing? Our young people have been increasingly recognizing that drugs are bad, that drug use does affect excellence in school, it holds kids back. One of the telling statistics is whether teenagers believe that possession of marijuana should be treated as a criminal offense. In 1979, only 44 percent of the teenagers surveyed believed that possession of marijuana should be a criminal offense. In 1985, that number grew to 73 percent. There is statistic after statistic showing that change in attitude.

Mr. **Roybal**. We only look at the bottom line. I agree with the education programs, I think they are great, and I think that attitude is something that has to be changed. The attitude in my day was completely different from the attitude of the last decade. Years ago a girl would not go out with anyone who smoked marijuana.

Mr. **Williams**. That was my school too.

Mr. **Roybal**. When I was in World War II, a motion picture star was in my platoon, who was caught smoking marijuana, and it was real trouble. We have to change attitudes, and I agree, but the bottom line says there is more marijuana coming into this country, consumed and used more today than ever before.

Statistics can't be disputed. The marijuana that comes in is based on the interdiction that has taken place and it is estimated that actual drugs coming into the United States is 10 times the amount of the number of pounds that are confiscated.

I don't think we have done a good job. I don't think that one person is responsible for the change of attitude, in all due respect to Mrs. Reagan, because there have been many on TV who have been equally active against marijuana, athletes and others, and I agree with this.

I think this should be done. But we are not doing the job apparently properly, because we continue to have more coming in, and more people using it.

I just wish that we would get a recommendation from the President—and one place where Mrs. Reagan can help is to ask the President not to reduce funds for those agencies that actually involve themselves in the interdiction of narcotics.

That would be the best service you could perform for the country. I commend her for the work that she is doing, but I hope she goes one step further and does that.

This is a subject matter that I am very much interested in, and it is one that is of great interest to this committee as a whole, and there isn't a single member of this committee that understands why, over the last six years, there has been a constant reduction in funds and personnel for those agencies that deal with narcotics.

There was even an attempt one time here to eliminate a particular Bureau in Treasury. We can't understand that. Well, that has nothing to do directly with your budgetary request.

I just thought we would take this time to discuss it, because I think it is a matter of great importance. I would like to ask you a question with regard to your budget, though.

GRAMM-RUDMAN REDUCTION

I see that you are $56,000 more in 1987 than you requested in 1986. And that is in view of the fact that you did comply with the Gramm-Rudman reduction of $117,000.

Had you not had Gramm-Rudman, what would have been your request?

Mr. **Hobbs**. You mean for the coming year?

Mr. **Roybal**. Yes, sir.

Mr. **Hobbs**. We would probably have had a request that is the same as it is right now. We entered 1986 with a considerable reduction in our staff, mainly because they had moved to other jobs in the Administration, or as my predecessor did, he went back to Harvard to teach and write a book.

So, the $117,000 reduction is manageable in fiscal year 1986 because our personnel expenditures are below our original budget. We have staffed up to the point now where I think we will enter 1987 in great shape to get by with this sum of money which we are asking for now.

I don't think our request would have been very different without Gramm-Rudman.

Mr. **Roybal**. Your request in 1986 was $2,726,000; your request for 1987 is $2,665,000.

Mr. **Williams**. The complication which causes the numbers to look a little strange was what Mr. Hobbs mentioned previously, the fact that we were in the midst of reorganization at the beginning of 1986. So consequently, we had some flexibility in not filling the positions, thereby saving money to meet the $117,000 reduction in 1986.

Implicit in our 1987 request is a Gramm-Rudman reduction, or a shortfall against our personnel costs of about $130,000.

Mr. **Roybal**. Did that result in reduction of personnel, Mr. Hobbs?

Mr. **Hobbs**. Either that or a reduction in average salaries of personnel. We have enough inflow and outflow of people that I think we can cover it through the combination.

Mr. **Roybal**. With attrition and whatever takes place?

Mr. **Hobbs**. Yes.

Mr. **Roybal**. So, your figure of $2.665 million will be adequate to carry on your operation?

Mr. **Hobbs**. Yes, it is an adequate figure.

Mr. **Roybal**. Is there anything else you would like to tell the committee? If not, I would like to thank you, Mr. Hobbs and Mr. Williams.

IMPROVED PRODUCTIVITY

Mr. **Williams**. I would like to express my thanks to the committee and to the staff for the support you have given us over the years. One thing we haven't brought up is the committee support in providing our automation, the computers we have on board. Had the committee not helped us out a few years ago, we would not have been able to meet our current budget request.

Mr. **Roybal**. This committee takes the position that if you are going to get equipment, get the best there is for the money.

Mr. **Hobbs**. It has allowed us to operate with fewer secretaries than might be expected. Our professionals are at the level where in any other job, they would expect to have a personal secretary. The personal computers and displaywriters are of substantial help in reducing clerical help, plus making our professionals a little better typists.

Mr. **Roybal**. Thank you very much.

The committee is adjourned.

[The justifications follow:]

Office of Policy Development
Executive Office of the President

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OFFICE OF POLICY DEVELOPMENT

SALARIES AND EXPENSES

For necessary expenses of the Office of Policy Development, including services as authorized by 5 U.S.C. 3109, and 3 U.S.C. 107; [and other personal services as authorized by 3 U.S.C. 107, $2,726,000] **$2,665,000.**

ATTACHMENT 1

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF POLICY DEVELOPMENT

The Office of Policy Development advises and assists the President in the formulation, evaluation and coordination of long-range economic and domestic policy; supports the operation of the Office of Cabinet Affairs, including the Domestic Policy Council and the Economic Policy Council; and, in accordance with Executive Order No. 12296, supports the President's Economic Policy Advisory Board.

ATTACHMENT 2

OFFICE OF POLICY DEVELOPMENT

SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 11-2200-0-1-802	1985 Actual	1986 Estimate	1987 Estimate
Program by activities:			
10:00 Total obligations................	2,275	2,726	2,665
Financing:			
25.00 Unobligated balance lapsing.......	745	--	--
40.00 Budget authority (appropriation)..	3,020	2,726	2,665
Relation of obligations to outlays:			
71.00 Obligations incurred, net........	2,275	2,726	2,665
72.40 Obligated balance, start of year.	344	318	148
74.40 Obligated balance, end of year...	-318	-148	-130
77.00 Adjustments in expired accounts..	-61	--	--
90.00 Outlays......................	2,240	2,898	2,683
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS			
Enacted/requested:			
Budget authority......................	3,020	2,726	2,665
Outlays...............................	2,240	2,898	2,683
Reduction pursuant to P.L. 99-177:			
Budget authority......................	--	-117	--
Outlays...............................	--	-103	-14
Total:			
Budget authority......................	3,020	2,609	2,665
Outlays...............................	2,240	2,795	2,669

ATTACHMENT 3

OFFICE OF POLICY DEVELOPMENT

OBJECT CLASSIFICATION (in thousands of dollars)

Identification Code 11-2200-0-1-802	1985 actual	1986 estimate	1987 estimate
PERSONNEL COMPENSATION:			
11.1 Full-time permanent..............	1,253	1,770	1,723
11.3 Other than full-time permanent...	76	45	45
11.5 Other personnel compensation.....	38	25	25
11.8 Special personal services payments	69	70	70
11.9 Total personnel compensation...	1,436	1,910	1,863
12.1 Personnel benefits: Civilian.....	132	181	177
21.0 Travel & transport of persons....	51	60	60
22.0 Transportation of things........	--	1	1
23.1 Standard level user charges.....	275	275	275
23.3 Communications, utilities, and miscellaneous charges.........	206	149	149
24.0 Printing & reproduction.........	3	9	9
25.0 Other services.................	92	77	77
26.0 Supplies & materials............	39	44	44
31.0 Equipment.......................	41	20	10
99.9 Total obligations............	2,275	2,726	2,665

ATTACHMENT 4

OFFICE OF POLICY DEVELOPMENT

PERSONNEL SUMMARY

Identification Code 11-2200-0-1-802	1985 actual	1986 estimate	1987 estimate
Total number of permanent positions	27	42	42
Total compensable work years			
Full-time equivalent employment	35	44	44
Full-time equivalent of overtime and holiday hours	1	2	2

ATTACHMENT 5

OFFICE OF POLICY DEVELOPMENT

DETAIL OF PERMANENT POSITIONS

Identification code 11-2200-0-1-802	1985	1986	1987
Ungraded positions......................	45	42	42
Total permanent positions..........	45	42	42
Unfilled, end of year..............	-18	--	--
Total permanent employment, end of year......................	27	42	42

ATTACHMENT 6

OFFICE OF POLICY DEVELOPMENT

Fiscal Year 1987

PERSONNEL SUMMARY BY SALARY RANGE

Identification code 11-2200-0-1-802

PERMANENT PERSONNEL CEILING: 42 ungraded positions

Estimated distribution by salary range:

Executive Level Equivalents--Total.......	6

Other Positions

Above $60,000........................	4
$50,001 to $60,000..................	4
$40,001 to $50,000..................	5
$30,001 to $40,000..................	8
$20,000 to $30,000..................	15

Total........................	36

ATTACHMENT 7

Executive Office of the President
OFFICE OF POLICY DEVELOPMENT

Summary of Changes from FY 1986 to FY 1987
(in thousands of dollars)

FY 1985 Budget Authority............. $3,020

	Increases	Decreases		
FY 1986 Base.........................			$2,726	
Total personnel compensation....	$0	$47		
Pers benefits: Civilian.........	0	4		
Total comp & benefits.........	0	$51		
Travel & transport of persons...	0	0		
Transportation of things........	0	0		
Standard level user charges.....	0	0		
Communications, utilities, and miscellaneous charges.........	0	0		
Printing & reproduction.........	0	0		
Other services..................	0	0		
Supplies & materials............	0	0		
Equipment.......................	0	10		
Total.......................	$0	$61		
Net Decrease......................			$61	-2.24%
Total FY 1987 Request..........			$2,665	

ATTACHMENT 8

March 10, 1986

OFFICE OF POLICY DEVELOPMENT

Salaries and Expenses

Explanation of Fiscal Year 1987 Budget and Changes from Fiscal Year 1986

SUMMARY

The Fiscal Year 1987 budget request of $2,665,000 for the Office of Policy Development is $61,000 below the budget estimate for Fiscal Year 1986 or a decrease of 2 percent.

The primary reason for the decrease between Fiscal Year 1986 and Fiscal Year 1987 is a reduction in full-time permanent personnel and equipment expenditures to meet budget targets established for Fiscal Year 1987.

The personnel authorization requested for Fiscal Year 1987 is 44 positions, including 42 full-time permanent employees and 2 temporary employees. This is the same number of personnel as authorized for Fiscal Year 1986.

The requested budget provides salaries and expenses for the Office of Policy Development in advising and assisting the President. The budget also supports the Office of Cabinet Affairs, including the Domestic Policy Council and the Economic Policy Council. As in previous years, the budget provides for the expenses of the President's Economic Policy Advisory Board.

OFFICE OF POLICY DEVELOPMENT

Fiscal Year 1987 Budget
by Major Object Classification

o Personnel Compensation and Benefits: $2,040,000 (over 76 percent of the total budget). This is $51,000 below the Fiscal Year 1986 estimate. Of the total, $1,723,000 is for salaries for full-time permanent positions (42 positions, the same number authorized for Fiscal Year 1986). The decrease of $51,000 is the computed reduction from the full-time permanent estimate for the current year and does not reflect the full impact of the reduction. The annualized payroll salaries exceed the requested amount by approximately $125,000 and the necessary savings will be achieved through delayed hiring and other personnel actions.

$45,000 is requested for temporary employees, including consultants (2 workyears, no change from Fiscal Year 1986), $25,000 for payment for overtime and holiday pay (no change), and $70,000 for reimburseable details (no change). The requested amount for civilian personnel benefits is $177,000 or $4,000 below the amount estimated for Fiscal Year 1986.

The estimate for Fiscal Year 1987 does not include a Cost-Of-Living adjustment and no supplemental appropriation will be requested for the current fiscal year.

- Travel and Transportation of Persons: $60,000 (2 percent of the total budget). This is the same amount as the Fiscal Year 1986 estimate for travel. The travel request reflects the estimated cost of essential staff and invitational travel.

- Transportation of Things: $1,000 (less that 1 percent of the total budget). The same amount as in Fiscal Year 1986, this is an allowance for delivery charges and shipments.

- Standard Level User Charges: $275,000 (10.3 percent of the total budget). This is the same amount as in Fiscal Year 1986, and reflects the rental rates established by the General Services Administration for office and administrative space in the Old Executive Office Building. No change in the amount of office space is anticipated for Fiscal Year 1987.

- Communications, Utilities, and Miscellaneous Charges: $149,000 (5.5 percent of the total budget). This is the estimated cost of telephone service and utilities, including office maintenance. It is the same as the amount budgeted in Fiscal Year 1986 and reflects anticipated service costs.

- Printing and Reproduction: $9,000 (less than 1 percent of the total budget). This is the same amount as the Fiscal Year 1986 estimate and reflects anticipated printing costs.

- Other Services: $77,000 (2.8 percent of the total budget). This is the same amount as budgeted for Fiscal Year 1986 and reflects the cost of contracting for electronic data services, for maintenance of office equipment, including computers, and other repairs. A substantial amount of computer equipment has been added to the inventory, increasing the requirement for maintenance. However, savings have accrued from the retirement of obsolete equipment and changes in maintenance service contracts, with the net effect of no cost increase in this category.

- Supplies and Materials: $44,000 (1.6 percent of the total budget). This is the same amount as in the current year and reflects the estimated cost of office supplies, materials, and publications.

- Equipment: $10,000 (less than 1 percent of the total budget). This is an allowance for equipment to maintain the office automation system at state-of-the-art technology. The amount is a 50 percent reduction from the current year and provides for component upgrading and remaining compatible with the White House support system. No major equipment acquisition is planned for the budget year.

OFFICE OF POLICY DEVELOPMENT

REDUCTION PURSUANT TO PUBLIC LAW 99-177

Program and Financing (in thousands of dollars)

Identification code 11-2200-6-1-802	1985 Actual	1986 Estimate	1987 Estimate
Program by activities:			
10:00 Total obligations................	--	-117	--
Financing:			
40.00 Budget authority (appropriation)..	--	-117	--
Relation of obligations to outlays:			
71.00 Obligations incurred, net........	--	-117	--
72.40 Obligated balance, start of year.	--	--	-14
74.40 Obligated balance, end of year...	--	14	--
90.00 Outlays......................	--	-103	-14

These reductions are required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177).

ATTACHMENT 9

WEDNESDAY, APRIL 9, 1986.

EXECUTIVE OFFICE OF THE PRESIDENT

WITNESSES

CHRISTOPHER HICKS, DEPUTY ASSISTANT TO THE PRESIDENT FOR ADMINISTRATION; DIRECTOR, OFFICE OF ADMINISTRATION

URSULA H. PEARSON, DIRECTOR, FINANCIAL MANAGEMENT DIVISION

RONNIE R. RASMUSSEN, BUDGET OFFICER

Mr. ROYBAL. The Committee will come to order. All right. The Committee will now hear from the Compensation of the President, The White House Office, the Office of Administration, the Special Assistance to the President, and Unanticipated Needs.

Each one is a separate appropriation. I, therefore, request Mr. Hicks to proceed in any manner he may wish to proceed on, and take on first the Compensation of the President and then we will go on to take each one. You may proceed.

Mr. HICKS. Thank you, Mr. Chairman. I would like to introduce the two witnesses with me today. Ursula Pearson is the Director of the Financial Management Division of the Office of Administration. Ron Rasmussen is the Budget Officer for the Office of Administration.

I will proceed with Compensation of the President if that's all right.

Mr. ROYBAL. Sure.

Mr. HICKS. The Fiscal Year 1987 budget request for Compensation of the President is $250,000. This includes the $200,000 for the direct salary of the President as authorized by 3 U.S.C. 102. This amount has remained constant since 1969. In addition, there is a $50,000 expense account for official use by the President; any unused portions of that account revert to the Treasury. This expense account is not taxable to the President.

Compensation of the President is exempt from Gramm-Rudman-Hollings mandated reductions.

Mr. ROYBAL. If I understand it, the Compensation of the President is exempt from the Gramm-Rudman and so are the salaries of Congressmen and members of the Senate; is that correct?

Mr. HICKS. I cannot speak to the exemption of members of Congress, but the Compensation of the President is exempted from any reduction.

Mr. ROYBAL. If that is the case, then can you tell the Committee how long it has been since the present salary for the President has been in effect?

Mr. HICKS. The current level has remained at the same since 1969. And the expense account has remained constant since 1949.

Mr. **Roybal**. Was any of the official entertainment allowance returned to the Treasury?

Mr. **Hicks**. Yes, sir. We used about 70 percent of the monies alloted, and the rest——

Mr. **Roybal**. Is that about the average every year?

Mr. **Hicks**. Yes, sir.

Mr. **Roybal**. About average?

Mr. **Hicks**. Sixty to 70 percent, yes.

Mr. **Roybal**. So, your total request then is for 250 thousand?

Mr. **Hicks**. Yes, sir.

[The justifications follow:]

EXECUTIVE OFFICE OF THE PRESIDENT

COMPENSATION OF THE PRESIDENT

For compensation of the President, including an expense allowance at the rate of $50,000 per annum as authorized by 3 U.S.C. 102; $250,000: Provided, That none of the funds made available for official expenses shall be expended for any other purpose and any unused amount shall revert to the Treasury pursuant to section 1552 of title 31 of the United States Code: Provided further, That none of the funds made available for official expenses shall be considered as taxable to the President.

EXECUTIVE OFFICE OF THE PRESIDENT

COMPENSATION OF THE PRESIDENT

These funds provide for the compensation of the President, and for official expenses.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

EXECUTIVE OFFICE OF THE PRESIDENT
COMPENSATION OF THE PRESIDENT

Identification code 11-0001-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program and Financing (in thousands of dollars)			
Program by activities:			
00.01 Compensation of the President	200	200	200
00.02 Expenses	35	50	50
10.00 Total obligations	235	250	250
Financing:			
25.00 Unobligated balance lapsing	15	...	...
40.00 Budget authority (appropriation)	250	250	250
Relation of obligations to outlays:			
71.00 Obligations incurred, net	235	250	250
72.40 Obligated balance, start of year	5	15	15
74.40 Obligated balance, end of year	-15	-15	-15
77.00 Adjustments in expired accounts	-2	...	...
90.00 Outlays	223	250	250
Object Classification (in thousands of dollars)			
11.1 Personnel compensation: Full-time permanent	200	200	200
25.0 Other services	35	50	50
99.0 Total obligations	235	250	250

Mr. ROYBAL. Thank you. Next we will hear from The White House Office.

Mr. HICKS. Thank you, Mr. Chairman. The mission of the White House Office is to provide staff assistance and administrative services for the direct support of the President of the United States.

The fiscal year 1987 budget request for the White House Office totals $25,179,000. Compared to the past two years, this request is slightly less than was appropriated for fiscal year 1985 and is a one percent, or $273,000, increase over the fiscal year 1986 enacted amount of $24,906,000. In compliance with the Gramm-Rudman-Hollings legislation, the enacted fiscal year 1986 appropriation was reduced by $1,071,000 to $23,835,000.

The requested increase for fiscal year 1987 is due primarily to partial restoration of the funding for the five percent pay reduction that was proposed for Fiscal Year 1986, but not enacted, and to increased costs for telephone service and other leased equipment.

The requested funds will provide for 322 full-time permanent positions. This staffing level has remained unchanged since fiscal year 1982.

We have tried to keep this budget request to a minimum, including in it only those costs which are absolutely essential for the continuation of the important functions of the White House Office.

In closing, let me say that I am grateful to the Committee for your past support, and I look forward to your continued support of our future operation.

ORGANIZATIONAL STRUCTURE

Mr. ROYBAL. Thank you, Mr. Hicks. Would you please provide, as you have in other years, an organizational chart with the heads of each of the offices listed and the number of employees in each office?

Mr. HICKS. I will be happy to do that. As in the past, the number of people assigned to various offices fluctuates, so I will be able to give you that snapshot as of a given period of time.

Mr. ROYBAL. I would also like to know how many employees there are that are assigned to the White House Office from other agencies.

Mr. HICKS. Currently, we have 19 reimbursable detailees.

Mr. ROYBAL. All right. Will you then in that organizational chart list, not necessarily the names but their positions or titles?

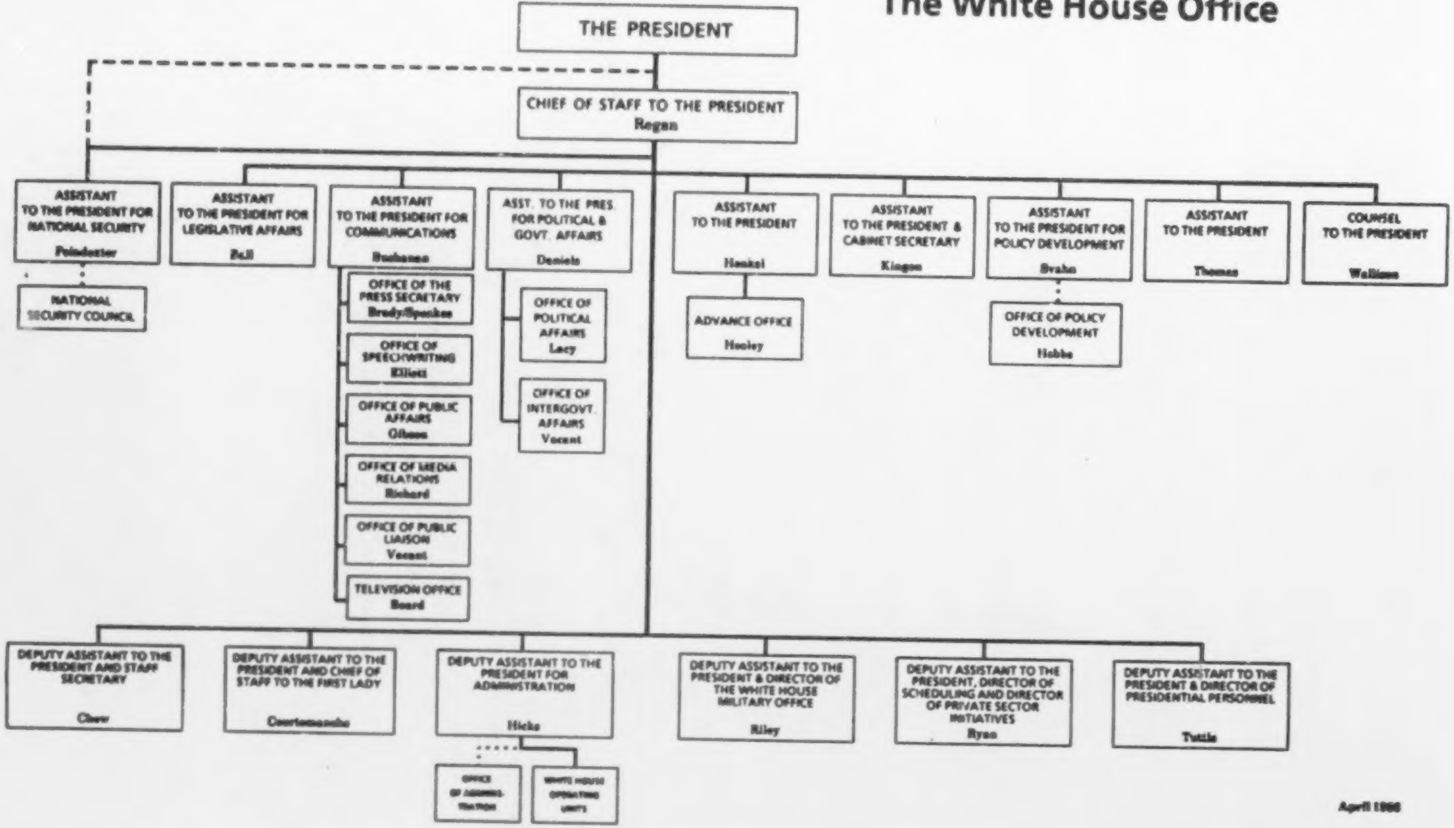
Mr. HICKS. Of the detailees?

Mr. ROYBAL. Of the detailees, yes.

Mr. HICKS. We would be happy to provide that for you.

[The information follows:]

The White House Office


THE PRESIDENT
CHIEF OF STAFF TO THE PRESIDENT Regan
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY Poindexter
NATIONAL SECURITY COUNCIL
ASSISTANT TO THE PRESIDENT FOR LEGISLATIVE AFFAIRS Ball
ASSISTANT TO THE PRESIDENT FOR COMMUNICATIONS Buchanan
OFFICE OF THE PRESS SECRETARY Brady/Speakes
OFFICE OF SPEECHWRITING Elliott
OFFICE OF PUBLIC AFFAIRS Gibson
OFFICE OF MEDIA RELATIONS Richard
OFFICE OF PUBLIC LIAISON Vacant
TELEVISION OFFICE Board
ASST. TO THE PRES. FOR POLITICAL & GOVT. AFFAIRS Daniels
OFFICE OF POLITICAL AFFAIRS Lacy
OFFICE OF INTERGOVT. AFFAIRS Vacant
ASSISTANT TO THE PRESIDENT Henkel
ADVANCE OFFICE Hooley
ASSISTANT TO THE PRESIDENT & CABINET SECRETARY Kingon
ASSISTANT TO THE PRESIDENT FOR POLICY DEVELOPMENT Svahn
OFFICE OF POLICY DEVELOPMENT Hobbs
ASSISTANT TO THE PRESIDENT Thomas
COUNSEL TO THE PRESIDENT Wallison
DEPUTY ASSISTANT TO THE PRESIDENT AND STAFF SECRETARY Chew
DEPUTY ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF TO THE FIRST LADY Courtemanche
DEPUTY ASSISTANT TO THE PRESIDENT FOR ADMINISTRATION Hicks
OFFICE OF ADMINISTRATION
WHITE HOUSE OPERATING UNITS
DEPUTY ASSISTANT TO THE PRESIDENT & DIRECTOR OF THE WHITE HOUSE MILITARY OFFICE Riley
DEPUTY ASSISTANT TO THE PRESIDENT, DIRECTOR OF SCHEDULING AND DIRECTOR OF PRIVATE SECTOR INITIATIVES Ryan
DEPUTY ASSISTANT TO THE PRESIDENT & DIRECTOR OF PRESIDENTIAL PERSONNEL Tuttle

April 1986

White House Office
Organization Functions and
Number of Permanent Employees and Detailees
As of February 1, 1986

Chief of Staff (10 employees) -- Provides advice to the President and directs the activities of the White House staff.

Assistant to the President for National Security (2 employees, 1 detailee) -- Provides advice to the President on national security issues.

Assistant to the President for Legislative Affairs (26 employees, 1 detailee) -- Provides legislative advice to the President and coordinates legislative issues.

Assistant to the President for Communications (65 employees) -- Provides advice to the President on communication with the public, the news media, federal agencies and other groups and constituencies.

> Office of the Press Secretary (3 detailees) -- Provides coordination between the White House and the national news media.
>
> Office of Speechwriting -- Drafts speeches for the President.
>
> Office of Public Affairs -- Coordinates public affairs statements from the White House throughout the Administration.
>
> Office of Media Relations -- Coordinates relationships between the White House and other-than-national-news media.
>
> Office of Public Liaison (9 detailees) -- Provides coordination and liaison between the President and various public groups and constituencies.
>
> Television Office -- Coordinates the televised activities of the President.

Assistant to the President for Political and Governmental Affairs (18 employees) -- Provides advice to the President on political and intergovernmental relations.

> Office of Political Affairs -- Provides coordination and liaison between the President and national, state and local political organizations.
>
> Office of Intergovernmental Affairs (2 detailees) -- Provides coordination and liaison between the President and State and local governments.

Assistant to the President and Advance Office (14 employees, 1 detailee) -- Coordinates the movement of the President to scheduled activities and events.

Assistant to the President and Cabinet Secretary (1 employee) -- Coordinates the activities of the Cabinet, and oversees the Domestic Policy Council and Economic Policy Council.

Assistant to the President for Policy Development (1 employee) -- Provides advice to the President on policy issues.

Counsel to the President (15 employees) -- Provides legal advice to the President and White House staff.

Deputy Assistant to the President and Staff Secretary (3 employees) -- Provides coordination of memoranda and informational and other decision materials for the President.

Deputy Assistant to the President and Chief of Staff to the First Lady (16 employees, 1 detailee) -- Provides staff support to the First Lady.

Deputy Assistant to the President for Administration (122 employees) -- Manages the administrative operating units of the White House Office.

> Administrative Office -- Provides general administrative, personnel, telephone, and travel support liaison between the White House staff and the Office of Administration.
>
> Correspondence Office -- Prepares general and special responses to correspondence received by the President.
>
> Executive Clerk -- Reviews, processes, and records all documents signed by the President, insuring their conformity to legal requirements, correct form and proper disposition.
>
> Records Management -- Maintains centralized files of all White House and Presidential documents, records and materials, and prepares them for deposit with the National Archives and presidential libraries.
>
> Visitor's Office -- Coordinates events in the White House involving the general public, including tours.
>
> Photographic Office -- Provides official photographic record of Presidential events and activities.

Deputy Assistant to the President and Director of the White House Military Office (1 detailee)-- Oversees the White House Military Office which provides support to the President in his role as Commander-in-Chief.

Deputy Assistant to the President and Director of Scheduling and Private Sector Initiatives (10 employees) -- Coordinates the President's schedule of activities and events.

Deputy Assistant to the President and Director of Presidential Personnel (4 employees) -- Coordinates Presidential appointments to policy and supporting positions throughout the Executive Branch.

The following list provides the titles of reimbursable detailees:

Assistant to the President for National Security Affairs (1)
Deputy Press Secretary (Foreign Affairs) (1)
Executive Assistant (1)
Associate Director for Public Liaison (1)
Security Coordinator (1)
Advanceman (1)
Secretary (6)
Congressional Correspondent (1)
Staff Assistant (6)

Mr. ROYBAL. Can you then describe the overall organizational structure of the White House at the present time?

Mr. HICKS. The White House Office is headed by the President of the United States. He has a Chief of Staff who is at the level of Assistant to the President and is also a member of the President's Cabinet. The operational and policy offices in the White House are headed by several Assistants to the President. Basically, they are divided along broad functional lines such as legislative affairs, policy development, legal affairs, and communications. You will see these areas in greater detail in the organizational chart submitted for the record.

Below this level are the Deputy Assistants to the President. These are second level, senior staff officials that head other operational or policy offices; my function as Deputy Assistant to the President for Administration and Director, Office of Administration is one example. Other examples are the Advance Office for the President and the Presidential Personnel Office. Again, these will be reflected on the organizational chart.

POLITICAL ACTIVITIES OF WHITE HOUSE EMPLOYEES

Mr. ROYBAL. All right, sir. And we also would like to know a little bit more about the activities of employees of the White House; that is, political, partisan political, activities of the employees of the White House.

I realize that we are in the political atmosphere, and I don't doubt that we all play a little role in partisan politics, but to what extent is something that this Committee would like to know.

Will you provide the Committee with some careful analysis of the actual partisan participation of the White House detailees and employees in partisan politics?

Mr. HICKS. I will be happy to do that. As you are aware, employees of the federal government that are paid out of the appropriation for the White House Office are specifically exempted from the provisions of the Hatch Act.

Detailees are not. Anyone detailed from another agency to the White House is covered by the Hatch Act. Therefore, no detailees or other agency employees whose duty station happens to be at the White House would be involved in activities prohibited by the Hatch Act.

Mr. ROYBAL. But the purpose of the fund is to provide a salary for those individuals to work in the White House, not to work in partisan politics.

Mr. HICKS. Yes, sir.

Mr. ROYBAL. And that's why I'm asking the question.

Mr. HICKS. I understand. There is an Assistant to the President for Political and Intergovernmental Affairs and the Office of Political Affairs reports to him. I believe the number of people in that office number about ten. Their primary function is to serve as liaison with the Republican National Committee (RNC) and with the Congressional Campaign Committee and the Senatorial Campaign Committee. It's a parallel structure to what has existed in previous White Houses, both Democratic and Republican. The President, of course, as is any President, is also the head of his party and does spend some time on partisan political activity. The Office of Political Affairs is there to coordinate the President's activities as the head of his party.

To the extent that White House employees who are not covered by the Hatch Act are involved in partisan activity that is not related to the President's activity, they would do so on their own time.

DETAILEES

Mr. **Roybal**. All right. Now, detailees come under the Hatch Act, therefore, they would not be permitted to participate actively in partisan politics.

Mr. **Hicks**. They are not allowed even to get near it. And we are very scrupulous about that.

Mr. **Roybal**. Can you tell the Committee whether or not the White House reimburses the agencies that in fact detail people to the White House?

Mr. **Hicks**. Yes, sir. The White House Office, the Office of Policy Development, the Office of Administration, and the Vice President's Office are required by P.L. 95-570 to fully reimburse agencies for any period occurring during any fiscal year after 180 days of employment.

PRESIDENTIAL TRAVEL

Mr. **Roybal**. It is understandable that you cannot take politics out of politics. However, I would like to know under what circumstances does the Republican National Committee reimburse the White House or Defense Department for political trips are by the President.

Mr. **Hicks**. This year is different from 1984 when the President himself was a candidate. Since the President will not be travelling again as a candidate, his political trips are on behalf of individual candidates or on behalf of party building exercises in various states. Since the majority of his engagements are in support of a candidate, the RNC itself actually reimburses relatively little for travel because campaigns are not RNC events. Before the President agrees to make an appearance on behalf of an individual candidate, a deposit is made by that candidate through either the Congressional or the Senatorial Campaign Committee. The amount of the deposit depends upon the length of the anticipated stay. The campaign must reimburse in full. Now, if it is a mixed trip, if the President makes a political stop and also does official business, we then use a formula called the Hard Time Event Formula. The formula is used, in concurrence with the GAO and actually counts the number of minutes the President spends in political activity as opposed to official work and divides the total expenses of the trip accordingly. The political expenses are reimbursed in full by the political organization.

Mr. **Roybal**. They are reimbursed in full?

Mr. **Hicks**. Yes, sir.

BUDGET REQUEST

Mr. ROYBAL. Now, one last question with regard to the budget itself. I see that you have an increase in 1987 of 1 million 344 thousand dollars over the amount available in 1986. Why the increase, particularly under Gramm-Rudman?

Mr. HICKS. Well, the increase that you refer to is the increase from the reduced '86 base after Gramm-Rudman. In other words, this Committee recommended a level for 1986, and we took a cut from that level pursuant to Gramm-Rudman of 1.1 million dollars. The difference between that reduced '86 base and our '87 submission is the amount that you referred to. Of course, our '87 budget was prepared and submitted to OMB long before Gramm-Rudman became a reality. So, we based our '87 submission on current services at the '86-85 level, not on Gramm-Rudman. Gramm-Rudman, as you know, was not enacted until later in the year, just before the President's budget was submitted to Congress——

Mr. ROYBAL. But the truth of the matter is, is it not, that you are recouping in this request the reduction under Gramm-Rudman?

Mr. HICKS. We will save $1.1 million pursuant to Gramm-Rudman in FY 1986. To recoup that reduction, we would have added an additional $1.1 million to the FY 1987 request before you. We don't anticipate another Gramm-Rudman reduction in 1987.

Mr. ROYBAL. I see.

Mr. HICKS. The way that I have tried to operate with the Gramm-Rudman reductions in 1986 is to look at them as a one-time cut and not a permanent reduction of current services. We have been able to absorb the Gramm-Rudman reduction in the White House Office by stretching out hiring, delaying some ADP work, and achieving other efficiencies. But we cannot continue to provide current services at that funding level forever.

Mr. ROYBAL. I understand. But Gramm-Rudman is here to stay, unfortunately.

Mr. HICKS. That's right. Gramm-Rudman is here to stay, and we have complied with its provisions in 1986. Our 1987 budget was prepared to allow a continuation of current services within the atmosphere of Gramm-Rudman.

Mr. ROYBAL. All right. Is it your contention then that you are not asking for any more than you got in '86?

Mr. HICKS. No, we are asking for additional funds for FY 1987. Our FY 1987 request is the level of funding we feel is needed to continue our current services, whether there is Gramm-Rudman or not. We hope there is not another Gramm-Rudman sequester in 1987. If there is, we will have to reevaluate what our current services are and most likely will not be able to provide the President with the type of support he has now.

Mr. ROYBAL. Well, you see this Committee is constantly faced with this particular situation. We have a Gramm-Rudman but everyone recoups what they lose under Gramm-Rudman and they come up with a request that is higher than last year. Now, if Gramm-Rudman is going to take effect we shouldn't be asking for any more than we got last year.

Mr. **Hicks**. Well, some accounts will require more funds and some will require less.

Mr. **Roybal**. But, we are supposed to be doing more with less.

Mr. **Rasmussen**. Mr. Chairman, you asked if we were recouping the money in Fiscal Year 1987. There is one aspect that is unique to both the White House Office as well as three other accounts represented here today. In the President's FY 1986 Budget, the agencies of the EOP included the five percent proposed pay reduction for federal employees in their requests.

Based upon an agreement between the Administration and Congress, an amendment was later sent to the Senate which requested restoration of those funds. For whatever reason, Congress felt that these particular EOP accounts should not receive any of that restoration.

These accounts, while being primarily labor intensive, felt a significant impact as a result of that lack of restoration. While we are not recouping Gramm-Rudman, we are in fact, trying to recoup a very small portion of the salary money that we did not receive last year. In the case of the White House, it is approximately $99,000.

Mr. **Roybal**. There is always a very logical explanation for all of these requests that are being made.

And the problem that this Committee is faced with is the fact that we do have a Gramm-Rudman, that the recommendations made for some other departments have been decreasing it, and then we find still other departments that come in with increases. One particular department that does all the decreasing is coming in with a budget that is 18 percent more than last year. I don't think that's fair.

Mr. **Hicks**. I——

Mr. **Roybal**. I'm only bringing this to your attention——

Mr. **Hicks** [continuing]. Understand.

Mr. **Roybal** [continuing]. Because I'm not being critical of what you are doing. I think the President of the United States should get whatever he requests that can be justified. But I think the principle that is involved here is that there is such a thing as a Gramm-Rudman, and that if that is to be effective every agency of government must tighten its belt a little bit.

If not, it won't be effective.

Mr. **Hicks**. I appreciate and understand your point, Mr. Chairman. If I could just add a bit of editorial commentary, I think the federal government as a whole would be very well off if they would follow the example of the way the White House and the Executive Office of the President has operated over the last five years. In real terms, our FY 1987 budget for the Executive Office of the President is less than the budget we inherited from the Carter Administration in 1981. Of the six budgets submitted by this Administration, two, in 1982 and in 1986, contained actual budget cuts in both nominal and real terms.

Our budget request for this year is less than it was in 1985. It is a small increase, one percent, over the amount that Congress enacted for 1986. But, as Ron explained, there are several reasons for that. All in all, in nominal terms, our budget has remained basically static for the last four years. And in real terms, when you factor in inflation, we actually have less money than we had in previous years.

STAFF LEVELS

Mr. **Roybal**. But you have more employees than any other President.

Mr. **Hicks**. That's incorrect, sir.

Mr. **Roybal**. Where did that information come from, then? I'm talking now, not just about the White House Office, but all of the Executive Office of the President.

Mr. **Hicks**. In 1981, the full-time permanent count for the Executive Office of the President was 1,786. For FY 1986, the ceiling authorized by this Committee and by Congress is 1,491.

Mr. **Roybal**. All right. How many have you detailed from other agencies?

Mr. **Hicks**. I think if you will look in testimony over the past few years, our number of detailees has decreased.

Mr. **Roybal**. Will you provide then for the Committee those figures so that whatever is being said in the newspapers can actually be used so that we can rebut some of these things.

Mr. **Hicks**. I will be happy to do that. As a matter of fact, I know the newspaper article you are talking about, and I almost responded in writing but I decided to let it lie.

Mr. **Roybal**. I wish you had.

Mr. **Hicks**. The reporter who wrote that particular article compared apples and oranges and did not look at the total figures of the full-time permanent positions for the Executive Office of the President. He did not take into account the reorganizations which have taken place and added things into the White House Office to inflate his figures. But I will be happy to respond to you in writing.

Mr. **Roybal**. Will you please clarify that.

Mr. **Hicks**. As a matter of fact, we can pull that article out. I think it was in "The Washington Post" and the "New York Times."

Mr. **Rasmussen**. There were two articles, sir. There was one in "The Washington Post" which dealt solely with personnel. There was also one in the "New York Times" which dealt with dollars and personnel for the entire EOP.

Mr. **Roybal**. I am referring to both articles. And I would like any information that would refute any of the conclusions that were reached by those who wrote the articles.

Mr. **Hicks**. I just happen to have here a response that I wrote for in-house use in the White House, but I would be happy to provide it to you. "The New York Times" recently published an article captioned, "One Area Where the Budget is Un-Reaganlike," the premise of which was contained in this paragraph if I just might quote.

Mr. **Roybal**. All right.

Mr. **Hicks**. "In the five years since Ronald Reagan took office, the Executive Office of the President has increased its budget by 23 percent, an amount that outpaces both inflation and the growth in domestic spending in the budget over the same period." That's a "New York Times" quote.

Mr. Roybal. Now, is that true?

Mr. Hicks. Paraphrasing the "New York Times," the correct statement is that in the five years since Ronald Reagan took office, the Executive Office of the President has increased its budget by 4.4 percent, less than one percent a year, an amount that lags far behind both inflation and the growth of domestic spending in the budget over the same period.

It should also be noted that the Fiscal Year 1986 enacted level after Gramm-Rudman is $3 million less than the budget proposed by the Carter Administration for the Executive Office of the President for Fiscal Year 1982. Even before Gramm-Rudman-Hollings, the EOP budget authority for Fiscal Year 1986 was only $1.8 million more than the Carter Administration proposed Fiscal Year 1982 budget.

I will be happy to provide this in full. It elaborates a little bit more.

Mr. Roybal. Yes. And also provide for further information that would substantiate the statements as you have read them based on numbers, percentages, source and the whole gamut of information that would be necessary to refute these articles. Because I don't know of any member of Congress that doesn't say: Well, I read this in the Times and those are the facts.

And I'm asking that of you, because that is going to be asked of me on the floor of the House.

Mr. Hicks. I appreciate your concern, Mr. Chairman. I will be happy to do that.

Mr. Roybal. And I would like to have whatever it is available to be able to tell the members, these are the facts as they have been given to me by Mr. Hicks.

Mr. Hicks. I will do that. Just to sum up, I think with your support that these accounts really do set a good example for the rest of government. It is a good story, and I will be happy to provide you the information to tell it.

[The information follows:]

Historical Overview of Employment Levels

Two recent articles attempt to demonstrate that the employment and appropriation levels under the Reagan Administration are higher than previous administrations. As discussed below, the numbers contained in those articles are erroneous.

For example, Washington Post reporter James Schwartz printed a chart in the January 22, 1986 edition of that newspaper purporting to show how the White House staff has expanded over the last fifty years. Mr. Schwartz essentially repeated information from a treatise in a college political science textbook, "The Swelling of the Presidency: Can Anyone Reverse the Tide," by Thomas E. Cronin (American Government, Readings and Cases; Peter Woll, ed.; Little, Brown and Co., 1984). Except for the substitution in Mr. Schwartz's report of 1985 data for the 1984 information in Mr. Cronin's work, the Post article exactly reproduces the table in Mr. Cronin's treatise.

In that treatise, Mr. Cronin presents employment figures for selected years dating back to the Franklin D. Roosevelt Administration, and states his opinions why the White House staff has grown. Mr. Cronin's statistics, at least from 1972, are faulty, however, in that he combines other organizations into the present-day employment totals while leaving the corresponding predecessor organizations out of earlier Administrations. Specifically, Mr. Cronin includes the staff of the Office of Policy Development in the employment attributed to the Reagan White House, as if that office is a totally new creation of this Administration. He apparently does not realize that the present Office of Policy Development is the current name of the organization called the Domestic Policy Staff by the Carter Administration and called the Domestic Council in the Nixon and Ford Administrations. For consistency, the 45 positions on the staff of the Office Of Policy Development should be deleted from the number attributed to the Reagan White House.

Further, Mr. Cronin attributes the entire staff of the Office of Administration to the Carter and Reagan White Houses, perhaps unaware that a substantial majority of the original composition of the Office of Administration was contributed by several agencies of the Executive Office of the President, notably the Office of Management and Budget, not simply the White House Office. The Office of Administration provides common administrative support to all 12 agencies of the Executive Office of the President. Our records indicate that the proportion of the Office of Administration's efforts directed toward the White House was 18% in 1980 and 31% in 1985. The employment figures should, therefore, be reduced accordingly.

A third major statistical error in the Schwartz/Cronin table was the inclusion of temporary and part-time employment in the Reagan figures, while failing to include the comparable employees of previous Administrations. The three agencies (the White House Office, Office of Policy Development, and the Office of Administration) which Mr. Schwartz and Mr. Cronin combined to form their description of the White House had a total of 61 full-time equivalent of non-permanent employment, which should be removed from the 1985 figures.

There are also other minor discrepancies where we are unable to verify the published numbers or determine their source. For comparison, the following two tables provide the previously published information and the correct information.

Incorrect White House Employment
per James Schwartz, (Washington Post)

Year	President	Direct Employ.	Reimb. Details	Total Employ.
1937	Roosevelt	45	112	157
1947	Truman	190	27	217
1957	Eisenhower	364	59	423
1967	Johnson	251	246	497
1972	Nixon	550	34	584
1975	Ford	533	27	560
1980	Carter	488	75	563
1985	Reagan	573	20	593

Correct White House Employment

Year	President	Direct Employ.	Reimb. Details	Total Employ.	Error
1937	Roosevelt	45	112	157	--
1947	Truman	190	27	217	--
1957	Eisenhower	364	59	423	--
1967	Johnson	251	246	497	--
1972	Nixon	540	0	540	+44
1975	Ford	533	27	560	--
1980	Carter	351+26*	70	447	+123
1985	Reagan	322+43*	38	403	+190

* Direct White House Office employment in 1980 and 1985 plus 26 and 43 positions respectively from the Office of Administration, based on percentage of effort in support of White House activity.

Sources:

1. 1937-1967: T. E. Cronin, ibid.
2. 1972-1985: (a) Direct employment, Budget of the United States, Appendix; (b) Reimbursable details, testimony before the House Subcommittee on Treasury, Postal Service, and General Government.

As can be seen from the corrected table, the staffing of the White House has been steadily declining for the past 10 years, and now stands at a point 29% below the peak in 1975.

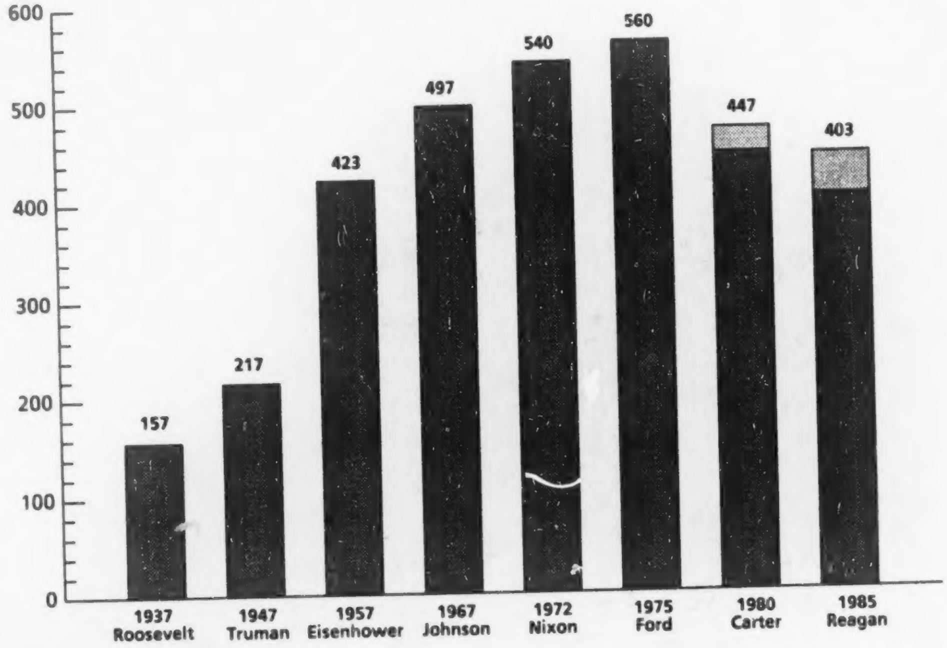
The overall Executive Office of the President parallels this decline in employment. In 1972, the actual total full-time permanent employment in the EOP was 2,174. In 1985, EOP permanent staffing totaled only 1,476, or a 32% decrease from 1972. Within the Reagan Administration alone, there is an approximate 18% decrease in authorized EOP staffing from 1,786 in FY 1981 to 1,478 in the 1987 budget proposal. The following charts display graphically these trends.

Conclusion

In his article cited above, Mr. Cronin concluded by stating "It is important for presidents not only to criticize the swelling government and its inefficiencies, but also move to deflate this swelling in the areas where it most needs to be deflated - at home, in the White House, and in the Executive Office of the President." That is, in fact, what has been happening.

Executive Office of the President

White House Employment
1937 - 1985

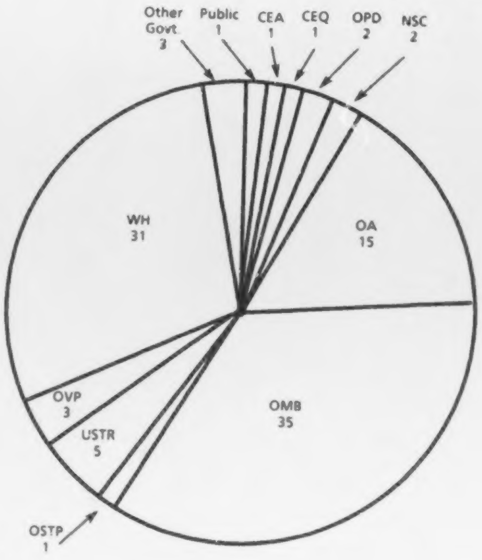


Source: 1937-75— "The Swelling of the Presidency: Can Anyone Reverse the Tide," by Thomas E. Cronin *American Government, Readings and Cases;* Peter Woll, ed.; Little Brown and Co., 1984.
1980-84— Above citation as corrected based upon official White House Records. Shaded area represents WH support by the Office of Administration.

Executive Office of the President

Percentage of Office of Administration Work Effort in Support of EOP Agencies

Fiscal Year 1985



Staffing Base

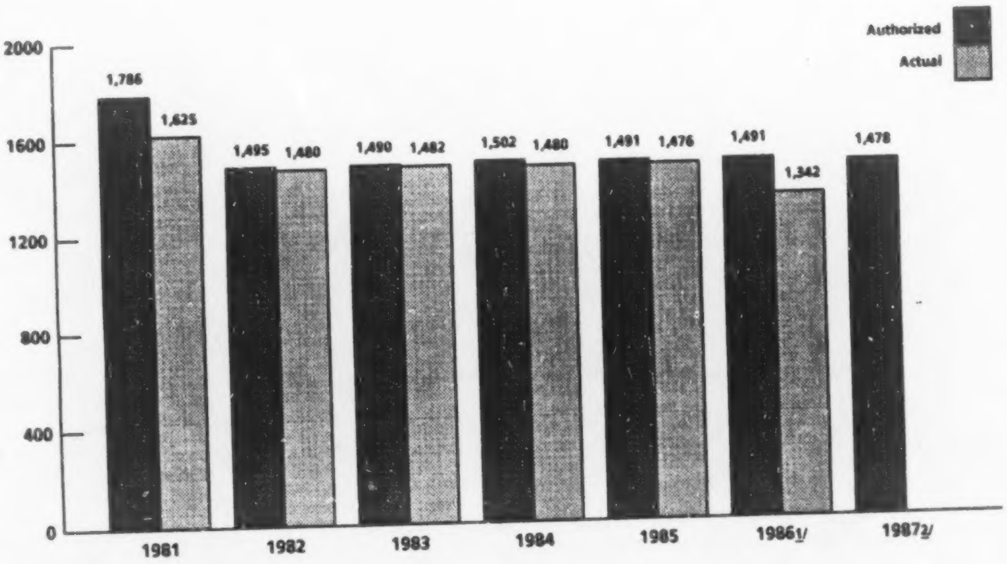
Authorized Direct Full-Time Permanent (FTP) Positions: 139

Executive Office of the President

Summary of EOP Staffing Levels

(Full-Time Permanent)

Fiscal Years 1981 – 1987



Source: Budget of the United States Government, Appendix, FY 1981-1987

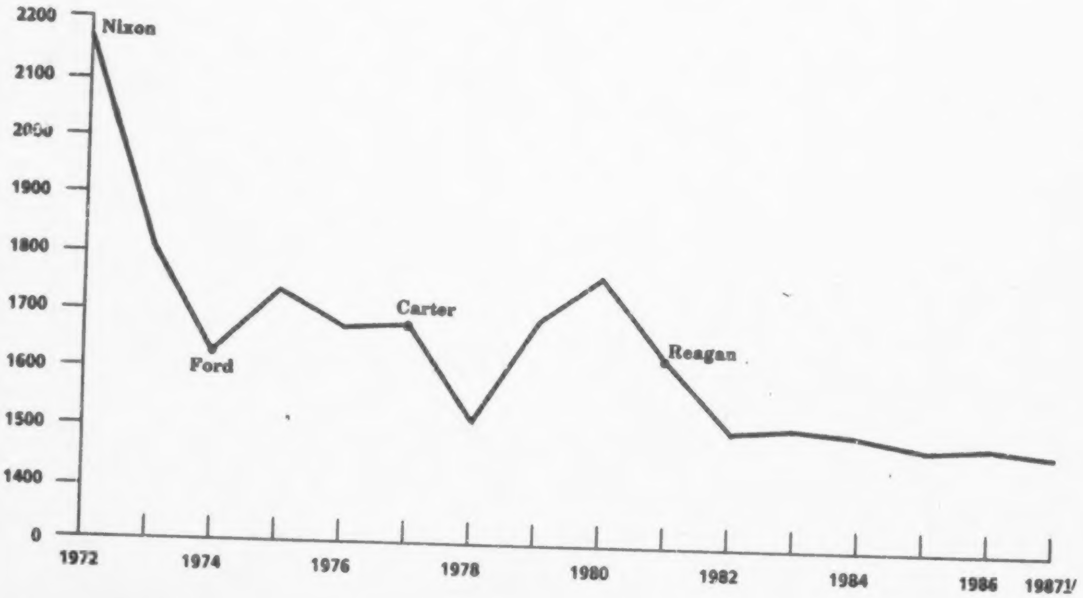
1/ Actual Staff as of April 12, 1986

2/ Proposed for FY 1987

Executive Office of the President

Historical Summary of EOP Employment

Fiscal Years 1972 - 1987



1/ Proposed for FY 1987
Source: Budget of the United States Government, Appendix, FY 1972-1987.

Historical Overview of Appropriations

On February 20, 1986, the New York Times published an article captioned "One Area Where The Budget is Un-Reaganlike," the premise of which is contained in the following paragraph:

> "In the five years since Ronald Reagan took office, the Executive Office of the President has increased its budget by 23 percent, an amount that outpaces both inflation and the growth of domestic spending in the budget over the same period."

That statement is incorrect in all respects. The actual facts are as follows:

- Upon taking office in January 1981, President Reagan inherited an already enacted Fiscal Year 1981 budget of $103.2 million for the Executive Office of the President (EOP). Five years later, in January 1986, before the Gramm-Rudman-Hollings (GRH) reductions, the enacted Fiscal Year 1986 budget for the EOP was $112.6 million. Therefore, even if the impact of GRH is ignored, the five year growth of the EOP budget from Fiscal Year 1981 to Fiscal Year 1986 was only nine percent ($9.4 million), not 23 percent.

- The Fiscal Year 1986 budget proposed and enacted for the EOP included a decrease from Fiscal Year 1985 of $3.2 million. GRH further reduced the Fiscal Year 1986 EOP budget authority by another $4.8 million; a total Fiscal Year 1986 reduction of $8.0 million from Fiscal Year 1985. As a result, the EOP budget actually stands today at $107.7 million, only $4.5 million more than Fiscal Year 1981.

- A correct statement is -- paraphrasing the New York Times -- that "in the five years since Ronald Reagan took office" the Executive Office of the President has increased its budget by 4.4 percent (less than one percent per year), an amount that lags far behind "both inflation and the growth of domestic spending in the budget over the same period."

- It should also be noted that the Fiscal Year 1986 enacted level, after GRH, is $3.0 million less than the budget proposed by the Carter Administration for Fiscal Year 1982. Even before GRH, the EOP budget authority for Fiscal Year 1986 was only $1.8 million more than the Carter Administration proposed for Fiscal Year 1982.

Apparently the New York Times arrived at its 23 percent growth figure by comparing the Fiscal Year 1982 EOP enacted budget --

the first budget submitted by this Administration -- to the President's recent Fiscal Year 1987 submission. While it is true that the EOP budget increased 23 percent from Fiscal Year 1982 to Fiscal Year 1987 as submitted, the following observations should be made to put that into the proper context:

- The actual Fiscal Year 1981 EOP budget inherited from the Carter Administration was $103.2 million. In its Fiscal Year 1982 budget proposal, the Carter Administration requested an increase for the Executive Office of the President to $110.7 million. Instead of adopting this proposal, the Reagan Administration proposed an across-the-board cut for the EOP. The result was an enacted Fiscal Year 1982 budget for the EOP of only $92.8 million.

- The resulting savings in Fiscal Year 1982 were $10.3 million from the Fiscal Year 1981 enacted level inherited from the Carter Administration, and $17.9 million from what the Carter Administration proposed to spend in Fiscal Year 1982.

- The Reagan EOP budget did not actually reach the level of the Carter Administration proposed Fiscal Year 1982 budget until Fiscal Year 1985. Furthermore, the $17.9 million savings achieved by this Administration in Fiscal Year 1982 alone, from what the Carter Administration would have spent that year, is more than the total actual increase ($11.4 million) of the EOP budget during the entire Reagan Administration (Fiscal Year 1981 enacted to Fiscal Year 1987 proposed).

- The New York Times apparently would have preferred the Reagan Administration to have spent the extra $17.9 million in Fiscal Year 1982. Had those savings been foregone and had the Carter Administration proposed Fiscal Year 1982 budget simply been adopted, rather than having reduced the Carter budget proposal by 16.1 percent, the increase in the EOP budget from the higher Fiscal Year 1982 base to Fiscal Year 1987 would have been only 3.5 percent rather than 23 percent. That is more favorable from a public relations standpoint, but at a cost of almost $18 million to the taxpayer.

Conclusion

Of the six budgets submitted by the Reagan Administration for the EOP, four have included aggregate increases and two (FY 1982 and FY 1986) included reductions in budget authority from the year before. When the Reagan Administration is viewed in its entirety, even if the FY 1987 request is included in this overview, the EOP budget authority from FY 1981 has increased in nominal dollars only 11 percent or an average of 1.8 percent per year. This is significantly less than the rate of inflation or the rate of growth in domestic spending for the same period.

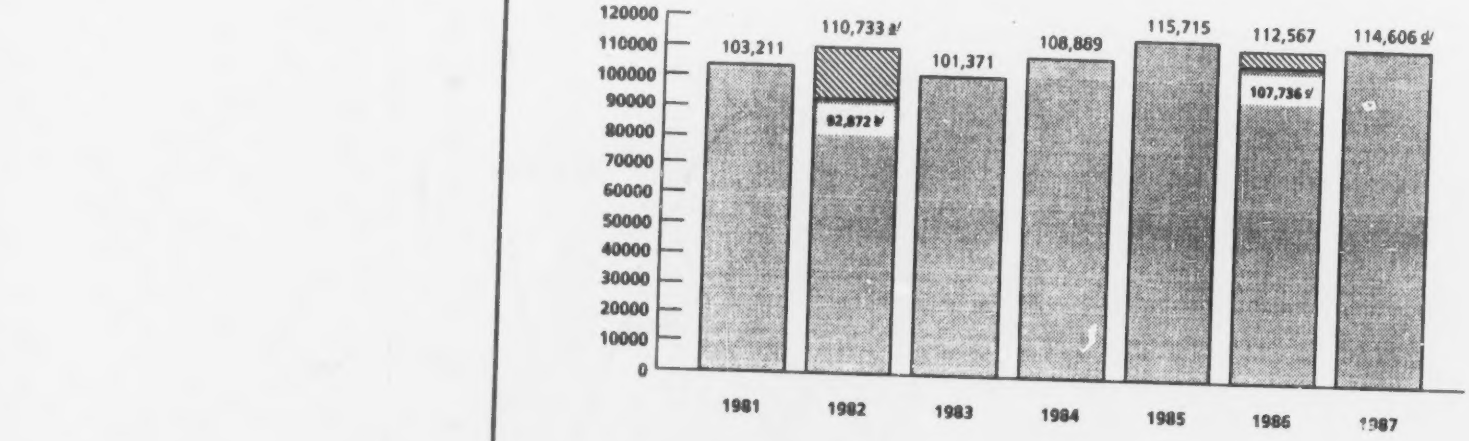
This downward trend is even more dramatic when viewed in real (constant) dollars against the three previous administrations (Carter, Ford, and Nixon). To account for inflation during this period, appropriations are expressed in constant dollars. When compared to the Nixon FY 1972 appropriation, the Reagan FY 1987 budget request represents a 30 percent reduction in funding. Just from FY 1981, the EOP budget, in constant dollars, has decreased approximately 13 percent. Clearly, the President has been "Reaganlike" in his budget requests for the White House and the Executive Office of the President.

		Appropriations	
Fiscal Year	Employment	actual $000	in constant 1967 $000
1972	2,173	$60,168	$48,074
1973	1,820	99,369	74,626
1974	1,633	97,567	66,053
1975	1,748	75,646	46,901
1976	1,684	68,508	40,214
1977	1,689	78,149	43,060
1978	1,526	77,687	39,776
1979	1,678	81,888	37,668
1980	1,780	100,502	40,703
1981	1,625	103,211	37,878
1982	1,480	92,872	32,134
1983	1,482	101,371	33,959
1984	1,480	108,889	34,953
1985	1,476	115,715	35,888
1986	1,491	112,567	33,795
1987	1,478	114,606	32,996

-Source: Budget of the U. S., Appendix for the respective years

Executive Office of the President
Total EOP Appropriations

Fiscal Years 1981 – 1987
(IN THOUSANDS OF DOLLARS)



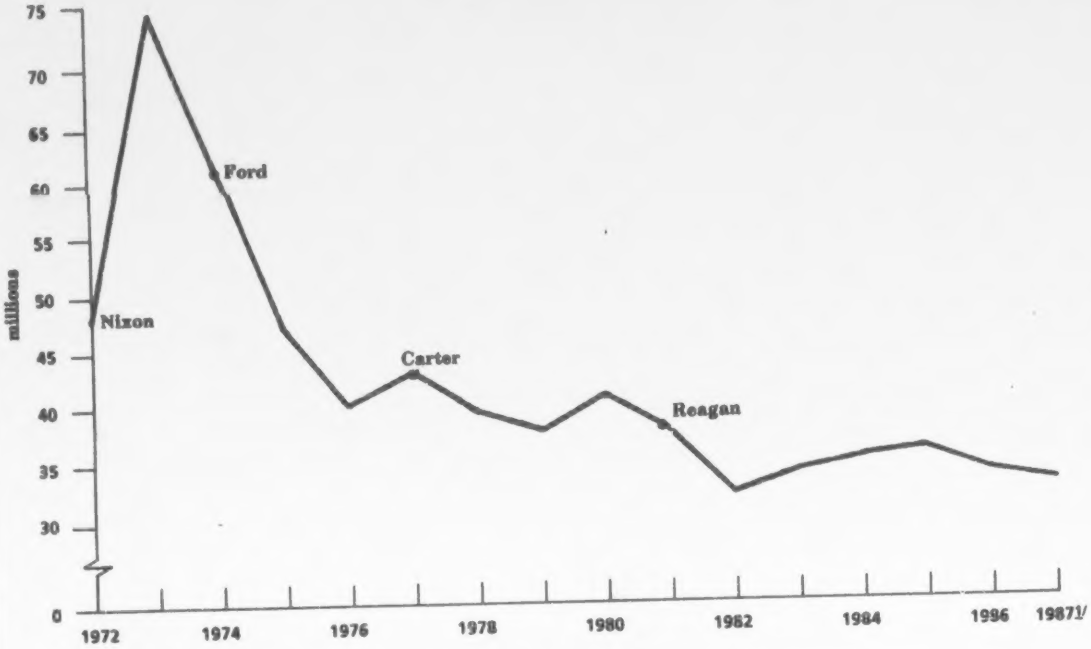
a/ Reflects the original Carter Budget Proposal
b/ Enacted Reagan EOP Budget
c/ Gramm–Rudman–Hollings Reduced Funding Level
d/ Proposed for FY 1987

Source: Budget of the United States Government, Appendix, FY 1981–1987

Executive Office of the President

Authorized EOP Appropriations

Fiscal Years 1972 - 1987
(IN CONSTANT 1967 DOLLARS)



1/ Proposed for FY 1987
Source: Budget of the United States Government, Appendix, FY 1972-1987 and U.S. Bureau of Labor Statistics, Consumer Price Index.

Mr. ROYBAL. Well, if we can hold the rest of the government to a 4.4 percent increase over——

Mr. HICKS. Over five years.

Mr. ROYBAL [continuing]. A period of five years, that would be terrific. Then, we don't need Gramm-Rudman.

PERSONNEL

Mr. RASMUSSEN. No matter how you look at our employment, whether it's actual or authorized, in that same period of time it has been reduced by approximately 18 percent.

Mr. ROYBAL. But these articles also say that the number of personnel that are assigned to the White House and so forth exceeds the numbers——

Ms. PEARSON. Are you talking about detailees?

Mr. ROYBAL. Detailees——

Mr. HICKS. There are other employees that are assigned to the White House obviously. There are people who work for another agency but whose duty station is the White House Secret Service, General Services Administration, Park Service, and some military people.

Mr. ROYBAL. Well, is it true that there are more of those people than ever before?

Mr. HICKS. I cannot believe that's true.

Mr. ROYBAL. That's what we read.

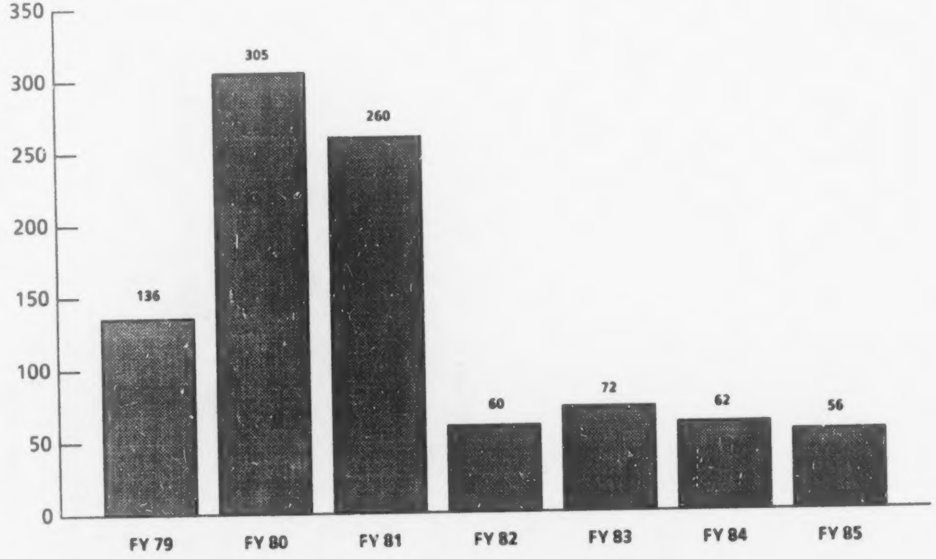
Mr. HICKS. I think what they are talking about are detailees. And detailees, I can speak to. Detailees have been reduced. Just since last year, we have reduced that. I believe we reported last year to this Committee that we had 38 reimbursable detailees. This year, the White House Office has 19. As an aggregate for the Executive Office of the President, we have also reduced that level. And we will provide that information to you.

Mr. ROYBAL. All right. Fine.

[The information follows:]

ZZ(1)

Executive Office of the President
HISTORICAL SUMMARY OF DETAILEE USE
Fiscal Years 1979 - 1985



Source: Aggregate Report on Personnel Pursuant to Title 3, United States Code, Section 113.
These Totals represent the cumulative total of detailees to each office for more than 30 days for the White House, Office of Administration, Special Assistance to the President (VP), Office of Policy Development, and the Executive Residence.

Ms. **Pearson**. Mr. Chairman, as you know, I have worked in the same job I'm in today under the Carter Administration. I do know the totals of the detailees being used under the Carter Administration, and I also do know that the totals have gone down considerably. There were many more detailees in the White House under the Carter Administration than today. I'm not saying that they weren't needed, but I do know that it did go down.

When I see the criticism in the paper, I take it personally because I have seen both Administrations; they both did their best. But I don't think it is right that this Administration should be criticized when we can show that we have an 18 percent cutback, which is a savings of approximately 12 million dollars per year just for personnel costs. That is a savings which we have been able to use in other areas, for instance in our ADP area. We have achieved many changes with very little money.

I have seen the two Administrations and I'm not critical of either one of them. But I do know that it did go down and I still have the records to show this in my office.

Mr. **Roybal**. Well, in the articles in question they didn't just state one Administration. They took all the Administrations.

Mr. **Hicks**. Yes, the personnel article did go back.

Mr. **Roybal**. They went back, and that's what this Committee wants to know, not just one Administration but go back.

Mr. **Hicks**. We will go back as far as we have records.

Mr. **Roybal**. As far as you have records and give this Committee the hard facts that are needed in the event that it's questioned on the floor, because I think it's going to be questioned.

Mr. **Hicks**. We will do that. Thank you.

[The justifications follow:]

Executive Office of the President
The White House Office

Salaries and Expenses

For expenses necessary for the White House Office as authorized by law, including not to exceed $3,850,000 for services authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; including subsistence expenses as authorized by 3 U.S.C. 105, which shall be expended and accounted for as provided in that section; hire of passenger motor vehicles, newspapers, periodicals, teletype news service, and travel (not to exceed $100,000 to be expended and accounted for as provided by 3 U.S.C. 103); not to exceed $20,000 for official entertainment expenses, to be available for allocation within the Executive Office of the President; [$24,906,000] $25,179,000.

EXECUTIVE OFFICE OF THE PRESIDENT

THE WHITE HOUSE OFFICE

Salaries and Expenses

These funds provide the President with staff assistance and provide administrative services for the direct support of the President.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

EXECUTIVE OFFICE OF THE PRESIDENT
THE WHITE HOUSE OFFICE
Salaries and Expenses

Program and Financing (in thousands of dollars)

Identification code 11-0110-0-1-802	1985 actual	1986 estimate	1987 estimate
Program by activities:			
10.00 Total obligations	25,148	24,906	25,179
Financing:			
25.00 Unobligated balance lapsing	41	......	......
40.00 Budget authority (appropriation)	25,189	24,906	25,179
Relation of obligations to outlays:			
71.00 Obligations incurred, net	25,148	24,906	25,179
72.40 Obligated balance, start of year	2,546	3,281	3;281
74.40 Obligated balance, end of year	-3,281	-3,281	-3,281
77.00 Adjustments in expired accounts	-330	......	......
90.00 Outlays	24,083	24,906	25,179
Summary of Budget Authority and Outlays (in thousands of dollars)			
Enacted/requested			
Budget authority	25,189	24,906	25,179
Outlays	24,083	24,906	25,179
Reduction pursuant to PL 99-177:			
Budget authority	......	-1,071	......
Outlays	......	-951	-120
Total:			
Budget authority	25,189	23,835	25,179
Outlays	24,083	23,955	25,059

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

The White House Office
Salaries and Expenses

Object Classification (in thousands of dollars)

Identification code 11-0110-0-1-802		19 85 actual	19 86 estimate	19 87 estimate
	Personnel compensation:			
11.1	Full-time permanent	12,336	12,620	12,735
11.3	Other than full-time permanent	801	865	877
11.5	Other personnel compensation	433	355	355
11.8	Special personal services payments	554	425	425
11.9	Total personnel compensation	14,124	14,265	14,392
12.1	Personnel benefits: Civilian	1,516	1,651	1,623
21.0	Travel of the President	22	100	100
21.0	Travel and transportation of persons	469	500	500
22.0	Transportation of things	14	13	13
23.1	Standard level user charge	2,636	2,585	2,585
23.3	Communications, utilities, and miscellaneous charges	2,824	2,512	2,618
24.0	Printing and reproduction	910	750	763
25.0	Other services	1,566	1,606	1,649
25.0	Official entertainment	15	20	20
26.0	Supplies and materials	448	404	416
31.0	Equipment	604	500	500
99.9	Total obligations	25,148	24,906	25,179

Personnel Summary			
Total number of full-time permanent positions	318	322	322
Total compensable workyears:			
Full-time equivalent employment	360	365	365
Full-time equivalent of overtime and holiday hours	12	12	12

STANDARD FORM 300
[illegible]

EXECUTIVE OFFICE OF THE PRESIDENT
THE WHITE HOUSE OFFICE
Salaries and Expenses

Reduction Pursuant to Public Law 99-177

Identification code 11-0110-6-1-802	1985 actual	1986 estimate	1987 estimate
Program and Financing (in thousands of dollars)			
Program by activities:			
10.00 Total obligations	......	-1,071	......
Financing:			
40.00 Budget authority (appropriation)	......	-1,071	......
Relation of obligations to outlays:			
71.00 Obligations incurred, net	......	-1,071	......
72.40 Obligated balance, start of year	......	......	-120
74.40 Obligated balance, end of year	......	120	......
90.00 Outlays	......	-951	-120

These reductions are required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177)

(Memo [illegible])

STANDARD FORM 306
July 1968, Bureau of the Budget
Circular No. A-11, Revised.
306-103

EXECUTIVE OFFICE OF THE PRESIDENT
THE WHITE HOUSE OFFICE
Salaries and Expenses

DETAIL OF PERMANENT POSITIONS

11-0110-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
GS-15	3	3	3
GS-14	6	6	6
GS-13	4	4	4
GS-12	10	10	10
GS-11	7	7	7
GS-10	15	15	15
GS-9	19	19	19
GS-8	13	13	13
GS-7	7	7	7
GS-6	3	3	3
GS-5	4	4	4
GS-4	4	4	4
GS-3	1	1	1
Subtotal	96	96	96
Ungraded	226	226	226
Total permanent positions	322	322	322
Unfilled positions, end of year	-4	---	---
Total permanent employment, end of year	318	322	322

Mr. Roybal. All right, we will now hear from the Office of Administration.

Mr. Hicks. Thank you, Mr. Chairman. The appropriation request for the Office of Administration will enable the agency to provide common administrative support and services to all agencies of the Executive Office of the President, including the White House Office.

The Fiscal Year 1987 appropriation request for the Office of Administration is $16,238,000. This is an increase of $641,000 over the Fiscal Year '86 appropriation of $15,597,000. It is slightly less than the Fiscal Year 1985 appropriation of $16,240,000.

The requested increase includes partial restoration of funding for the five percent pay reduction that was proposed for 1986, but not enacted. The remainder of the increase comes from uncontrollable cost increases, primarily charged by other government agencies. These include rising utility costs comprised largely of telephone and after-hour utilities charges, an increase in the Executive Office of the President's share of payroll processing charges to the Department of Treasury, rising printing costs, and the need to cover the increased workload and costs associated with the operation of the Executive Office of the President Computer Center. Aside from the annual cost increases for the ADP facility, additional resources are required to support the administrative systems recently transferred from the White House Communications Agency computer facility to the Office of Administration. Staffing levels remain unchanged.

Beyond these appropriated funds, the Office of Administration is anticipating $3,004,000 in reimbursements for ADP systems development. This represents a $262,000 increase over estimated 1986 reimbursements.

The Gramm-Rudman-Hollings (GRH) legislation had a twofold impact on the Office of Administration. First, the 4.3 percent reduction of $671,000 came off of an already reduced base. As the Committee knows, for 1986, in addition to absorbing the five percent pay reduction, the Office of Administration due to the nature of its mission, took the largest reduction of administrative costs in the Executive Office of the President, $559,000.

The second impact due to GRH was increased workload. The Office of Administration Automated Systems Division, which provides considerable ADP support to the Office of Management and Budget, experienced a substantial increase in activity, during the short timeframe of the budget season, due to OMB's data gathering and reporting requirements under GRH. Furthermore, due to these new GRH reporting requirements, it is expected that the Office of Administration will be faced with additional ADP demands this summer and in future years.

I would like to express my gratitude to you and the Committee for your continued support. Without it, the Office of Administration would not be able to continue to give the White House and the Executive Office of the President the support which it requires and deserves.

Thank you, Mr. Chairman.

EFFECT OF THE GRAMM-RUDMAN-HOLLINGS LEGISLATION

Mr. ROYBAL. Thank you, Mr. Hicks. I see also by your budgetary request that the increase for Fiscal Year '86 is 1.3 million dollars, which is almost exactly the same amount in increases as we find for the White House Office. That makes 2.6 million dollars increase.

Now, what impact would it have if that increase was not granted by the Committee?

Mr. HICKS. The majority of the increase that you mentioned, the $641,000 is over the GRH '86 base. Is that right?

Ms. PEARSON. Yes.

Mr. HICKS. The 1987 budget for the Office of Administration was prepared and submitted to OMB in August and September of last year before GRH was even discussed. It was based on what we felt was the necessary amount of money to continue operation of the Office of Administration at the FY 1986 current service level. Actually, 1986 hadn't begun so it was 1985 current service level.

The GRH legislation came along and we took our 4.3 percent cut just like everyone else. But we viewed that as a one-time cut to meet the Gramm-Rudman deficit targets for 1986. We did not reduce the level of current services that we provide to the President and the agencies within the Executive Office of President because of the one-time 1986 Gramm-Rudman-Hollings sequestration.

We have been able to meet the 1986 targets of 4.3 percent cuts by delays in hiring, deferring some ADP, work, evaluating our lease arrangements, and in other initiatives. We have been able to accomplish this and continue the current services that we provide. If we took a reduction in 1987, either to continue at the 1986 post-GRH base or if the budget is not passed by Congress and signed by the President and there is a GRH sequestration in 1987 we would have to reevaluate the level of services that we provide.

Mr. ROYBAL. No matter how we slice it, it's still more than 1986.

Mr. HICKS. The request is more than '86; but less than '85. There is some growth, but it is marginal. If you look at the Office of Administration for the past three years and as we've discussed in the past, the Executive Office of the President as a whole over the last five years in nominal terms, we have had very little increase, on the order of 4.4. In real terms, we are just about where we were five years ago, or even less.

Mr. ROYBAL. But that's exactly the same explanation that we get from almost every department.

Mr. HICKS. I doubt that there are very many other agencies in government who can say that they are, in real terms, lower than they were at the beginning of this Administration.

Mr. ROYBAL. That may be different. But we still have some logical explanation of why there is this increase, and this matter of service comes into the picture. But the truth of the matter is that their appropriations for 1986 was one figure and the appropriations for '87 was another, and that there is a definite increase of money in the two amounts.

You just can't divorce oneself from that particular fact. It is there. I would like to see a situation where we in fact are doing more with less. But I haven't seen that yet.

Mr. Hicks. I believe we are doing more with less.

Mr. Roybal. Well, if you did, Mr. Hicks, you wouldn't be needing any more money. You had 15 million in 1986, 15.5 million, less 671 thousand. In 1986, 15.5 million, less 671 thousand because of Gramm-Rudman. You still provided the same service. You didn't fire anyone. You were able to provide everything.

Then comes in 1987, you are asking for 16.2 million dollars, which is an increase of 1.3 million. The increase is still there.

And, you know, what I'm trying to get is to impress upon you that this Committee does in fact have a problem with this request. And we are going to have to come in with, in passing the bill, a situation where we are going to be recommending probably, if we take all of these figures and bring them into the House as they are now, where the bill is going to be higher than last year at a time when people are saying: But you passed the Gramm-Rudman. You are supposed to be lower.

Everyone thinks that the cost of the government is going to automatically decrease simply because Gramm-Rudman was passed. I think that was the worst thing that the Congress ever did. But that's the impression that people have.

Mr. Hicks. Of course, the agencies within the Executive Office of the President, the Office of Administration, the White House, and the others are all part of the total FY 1987 budget that the President submitted. The President submitted a budget that he felt in total will meet the GRH FY 1987 deficit targets. The budget requests reflected here today, and the other requests of the Executive Office of the President are consistent with his strategies and goals to meet the 1987 GRH targets.

Mr. Roybal. I understand that. I can understand what he is getting at and everything. And if I were in his place, I would do exactly the same thing.

But we are going against the grain insofar as the attitudes of people that we have to be facing, particularly this year. They think because of Gramm-Rudman, everything is going to be reduced—the cost of government is going to be reduced.

And, you know, it is argument after argument one has to face. When you face students, when you face voters, when you face whatever it is in your particular district or state, that seems to be the attitude that people have. And it's very hard to face it when you say: Yes, but with this exception, these departments need more—and every department has come in with a request for more. Only a very few have said: We are going to operate at the same level as we did last year.

Mr. Hicks. Within the Executive Office of the President, we have at least one agency that has requested a budget exactly the same——

Ms. Pearson. Three.

Mr. Hicks. Three that are not requesting an increase and some below and some above. I would like to reiterate that the requests for the Office of Administration, the White House Office, and others are lower than we were two years ago. It is a slight increase over '86 because we saw one-time savings last year that we could take, some that we didn't want to take in the pay reduction, but others that we did take. We took the savings when we could get them.

We are still lower than we were two years ago. That is why I say, if you put the requests for the White House and the Office of Administration in context of the entire EOP over the last several years, we really are static.

Mr. Roybal. Give the Committee some chart, some factual evidence in writing, one that we can analyze that substantiates these statements, because again I have to repeat myself, this is going to be a subject matter that I'm sure is going to be discussed.

Mr. Hicks. I have a chart here which I would be happy to provide for the record, Mr. Chairman, just to illustrate the point I was trying to make. For FY 1985, the appropriation for the Executive Office of the President, in the aggregate, all 15 accounts, was $115,715,000. The Fiscal Year 1986 request which we submitted, adopted by this Committee, and passed by Congress totalled $112,567,000 before GRH and represented a decrease from 1985.

Obviously, the GRH sequestration took that amount even lower. In the aggregate, the FY 1987 request for the Executive Office of the President totals $114,606,000 and is an increase over '86, but is less in nominal terms than our 1985 request.

Is this the same chart?

Ms. Pearson. Yes.

Mr. Roybal. Well, we would like to include this chart and place it in the record at this point.

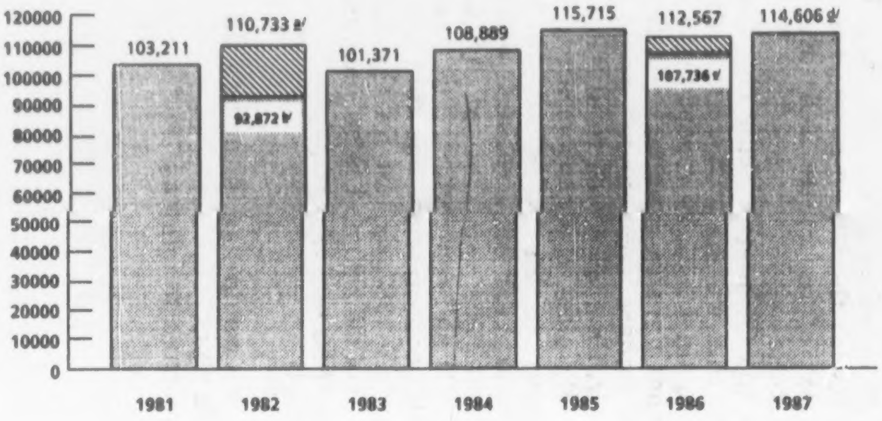
[The information referred to follows:]

Executive Office of the President

Total EOP Appropriations

Fiscal Years 1981 -1987

(IN THOUSANDS OF DOLLARS)

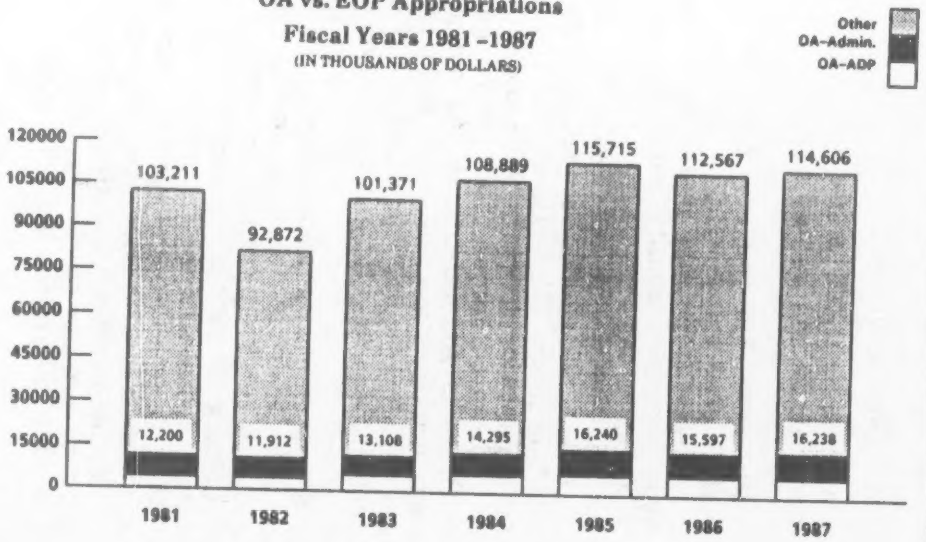


a/ Reflects the original Carter Budget Proposal
b/ Enacted Reagan EOP Budget
c/ Gramm–Rudman–Hollings Reduced Funding Level
d/ Proposed for FY 1987

Source: Budget of the United States Government, Appendix, FY 1981–1987

Executive Office of the President
Office of Administration

OA vs. EOP Appropriations
Fiscal Years 1981 –1987
(IN THOUSANDS OF DOLLARS)



	1981	1982	1983	1984	1985	1986	1987
Ratio of OA–Admin. Funding to Total EOP Funding:	7.5%	7.8%	7.3%	7.3%	7.7%	7.4%	7.7%
Ratio of OA-ADP Funding to Total EOP Funding:	4.3%	5.0%	5.6%	5.8%	6.3%	6.5%	6.5%
Ratio of Total OA Funding Level of All EOP:	11.8%	12.8%	12.9%	13.1%	14.0%	13.9%	14.2%

Source: Budget of the United States Government, Appendix, FY 1981 — 1987

Mr. **Hicks**. Thank you, Mr. Chairman.

ADP EQUIPMENT

Mr. **Roybal**. One more thing that I would like to find out about is your ADP equipment. I think you should have the best available for the money.

What about the equipment that you now have? Is it the best? Are you operating with inferior equipment?

Mr. **Hicks**. There is always something better in computer equipment. We are however providing quality automated systems support to the Executive Office of the President.

There are measures that we would like to take to enhance operations even further, some of which are required by Gramm-Rudman itself. In addition to the White House and the other agencies, the Office of Administration supports OMB and because of the activity generated by Gramm-Rudman itself, more workload has been placed on the Office of Administration. As a result, we are having to increase our workload in 1986 at the same time that we are taking the Gramm-Rudman cuts. That is what I tried to stress in my opening statement, we are getting it both ways, coming and going.

We have had to defer some enhancements that we would have liked to have done this year. To get back to your earlier point, we have been able to absorb these cuts this year without firing anybody and without shutting off any of our computers. But we are not going to be able to operate in the future at Gramm-Rudman reduced levels. If the '86 post-Gramm-Rudman becomes the '87 level and there is another Gramm-Rudman sequester on top of that, we will have to decide exactly what kind of automated system support we are going to provide to the President of the United States. He will not be able to have the best available.

ADP SUPPORT OF EOP AGENCIES

Mr. **Roybal**. All right. Now, to what extent do you do complex economic analysis for the Council of Economic Advisers?

Mr. **Hicks**. The Council of Economic Advisers has executive work stations and an office automation system. But they also subscribe to some outside services. A commercial informational service, Data Resources Incorporate (DRI) is one example.

Ron, can you speak to the complex analysis on the computers itself.

Mr. **Rasmussen**. Mr. Chairman, CEA is a good example of efficiencies achieved by automation. Approximately three years ago, the Council of Economic Advisers was spending in excess of $300,000 per year strictly for commercial based data services to do their economic analysis. With the support of this Committee, CEA was allowed to reprogram funds which were used to purchase EOP compatible, IBM equipped work stations and specialized software packages to support economic analysis. In most instances, this upgrade replaced stand-alone equipment and the need for commercial data base services.

The bottom line, so to speak, is CEA has realized a dramatic savings in Fiscal Year 1986. The Council's dependency on commercial data base services has been reduced from $300,000 down to approximately $90,000.

Mr. **Roybal**. Can you actually identify that as a savings?

Mr. **Rasmussen**. Yes, sir, a hundred percent.

Mr. **Roybal**. Now, what about savings resulting from increased use of ADP equipment?

Mr. **Rasmussen**. Without question, sir. And it goes back to Mr. Hicks' earlier comment. When you look at the entire EOP complex, there is no question that staffing has gone down, whether it's authorized or actual, by 18 percent or approximately 300 positions. We estimated that for a five year period of time, those 300 positions would have cost $60,000,000 or approximately 11.8 million dollars a year.

Basically, we made the automation of the EOP our No. 1 priority. Had it not been for our initiatives in this area and again, the support of both committees, we would not have been able to achieve these savings and efficiencies.

A more immediate example was the impact of Gramm-Rudman from an operational standpoint. I was witness to the computer delays. We have two Xerox laser printers, and at times, we were experiencing upwards of three to four hour backlogs on these printers which operated seven days a week, 24 hours a day, merely to produce the reports required under Gramm-Rudman. When comparing the workload under Gramm-Rudman with a similar period of time last year, our computer facility experienced a 1.5 to 2 million increase in the number of printed pages just to support Gramm-Rudman.

Mr. **Hicks**. I think it's safe to say Mr. Chairman, and I don't want to return to the argumentative point of Gramm-Rudman, but without automation it would have been impossible for OMB to have complied with the requirements of Gramm-Rudman, not in the dollar cuts, but just in the activity, the data gathering, the reports that had to be submitted to Congress. I think it would have been impossible for OMB to have complied with the mechanics of the Gramm-Rudman legislation were it not for our progress in office and mainframe automation.

Five years ago, we just couldn't have responded in the time frame that was mandated under this legislation.

Mr. **Roybal**. Well, had it not been done then your personnel would have increased.

Mr. **Rasmussen**. Overtime costs.

Mr. **Hicks**. If I may add, OMB estimates that it spent on the recent exercise with Gramm-Rudman, I believe their figure is 40,000 manhours, which translates into at least 20 or 25 people that they would have had to add just to do that. And of course, these people would have been called in on short notice and would not have been adequately trained.

Mr. **Rasmussen**. That also does not include computer software redesigned to accommodate GRH.

Mr. **Hicks**. That's right.

Ms. **Pearson**. Mr. Chairman, I have been head of the Financial Management Division for the last 7 years. I have the same amount of staff I had seven years ago. When I came to the Executive Office, they didn't even know what a computerized accounting system was. They had ledgers. The White House Office truly had manual ledgers.

I developed an accounting system for the entire EOP. Today, this system is so up-to-date that I can operate with the same amount of people while giving many times over more accurate information. That in itself proves that without ADP, we could have never achieved these savings.

Mr. HICKS. It's a good story.

Mr. ROYBAL. We've made a lot of progress actually in the procedure as a whole.

Mr. HICKS. I really think that it is a good story. You can't really say that the reduction of approximately 300 positions, full-time permanent positions, is one-on-one due to automated data processing. But certainly that had a significant impact on our ability to produce. As you pointed out, if it was not for the strides that we've made in the past five years, we would be going up in personnel instead of down.

Mr. ROYBAL. I thank you very much.

Mr. HICKS. Thank you, Mr. Chairman.

[The justifications follow:]

Executive Office of the President
Office of Administration
Congressional Submission
FY 1987

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I. GENERAL STATEMENT

Executive Office of the President
Office of Administration

The Office of Administration (OA) was created by Reorganization Plan No. 1 of 1977 and formally established by Executive Order 12028. The purpose of the Office of Administration is to provide common administrative support and services to all agencies within the Executive Office of the President (EOP) and upon request, services in direct support of the President. The eleven separate agencies in the EOP are:

Council of Economic Advisers
Council on Environmental Quality
Office of Policy Development
National Security Council
    President's Foreign Intelligence Advisory Board
    President's Intelligence Oversight Board
Office of Administration
Office of Management and Budget
    Including Office of Federal Procurement Policy
Office of Science and Technology Policy
Office of the United States Trade Representative
    (with branch office in Geneva, Switzerland)
Office of the Vice President
White House Office
National Critical Materials Council

The Office of Administration is composed of five functional divisions which are:

Personnel Management Division
Financial Management Division
Administrative Operations Division
Library and Information Services Division
Automated Systems Division
- Computer Operations and Telecommunications
- Systems Development

The services provided by these divisions are Personnel Management which includes recruitment, classification, training, and administration of equal employment opportunity programs; Financial Management is responsible for accounting, budget, payroll, travel, and imprest fund; Administrative Operations provides mail and messenger, printing, graphics, document preparation, procurement, and supply services. The Library gives support for information services including records management along with maintenance of all periodicals, books, and microform. All systems development, computer operations and related support services are performed by the Automated Systems Division.

II. SUMMARY OVERVIEW

Executive Office of the President
Office of Administration

The Office of Administration (OA) has historically made every effort to offset cost increases through the pursuit of managerial excellence, increased productivity, and automation. During FY 1986, OA absorbed budget reductions in two areas: $559,000 on behalf of the entire Executive Office of the President for administrative cost savings and $197,000 for the 5 percent pay reduction, none of which was restored. When combined, this absorption amounts to $756,000 or approximately 5 percent of our financial resources.

For FY 1987, the Office of Administration is requesting a budget of $16,238,000 which represents a $641,000 or 4.1 percent increase over the FY 1986 authorization of $15,597,000 and $2,000 below our FY 1985 funding level of $16,240,000. Included in this request is restoration of $173,000 or 65.8 percent of the 5 percent pay reduction. Also included is $468,000 to offset uncontrollable cost increases for utilities and printing imposed primarily by other government agencies and an expanded workload in automated data processing (ADP) support services.

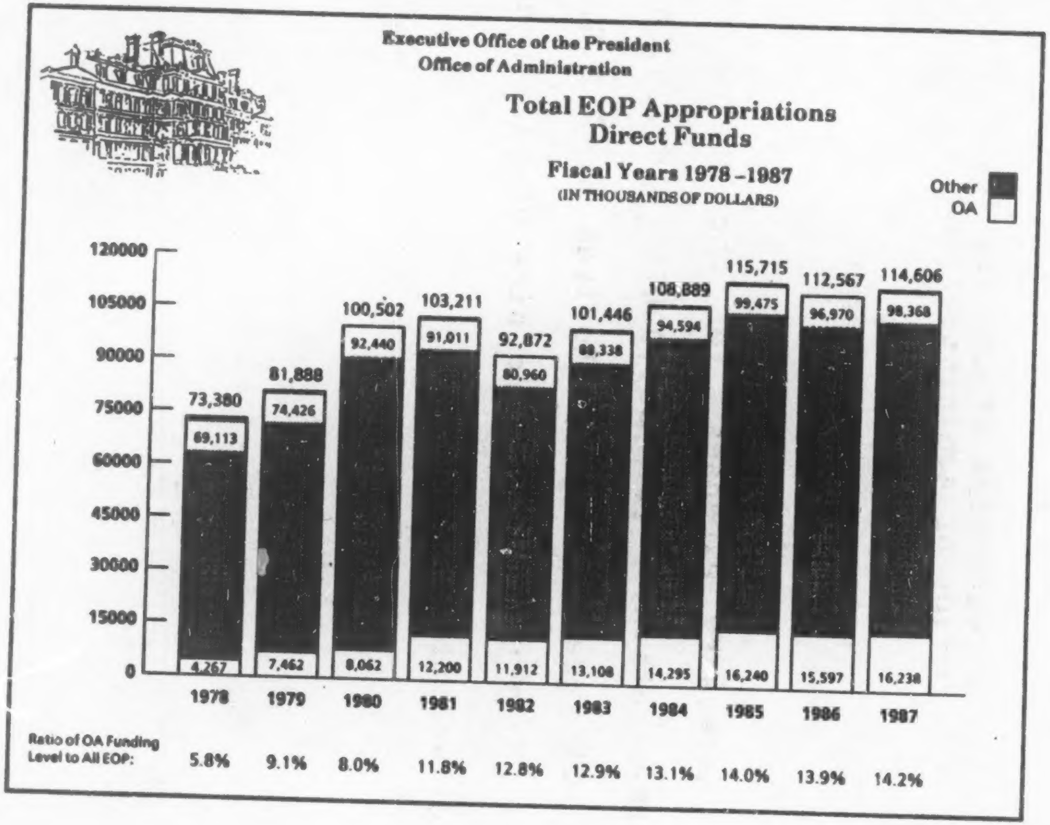
The Office of Administration will also be reimbursed by other agencies in the Executive Office of the President for specialized computer systems development work performed at their request. Estimated reimbursements for FY 1987 are $3,004,000 which is $262,000 more than the sum expected in the current fiscal year.

In part, this request will provide for 163 permanent positions of which 24 are funded by reimbursements for systems development work. The staffing level remains the same as FY 1986.

While exercising fiscal restraint, the Office of Administration has tried to set an example in the delivery of administrative and ADP services. In this tradition, our FY 1987 budget request, as presented, will continue to provide support to the White House and all other EOP agencies.

BUDGET OVERVIEW

	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY '86-'87
Budget Authority				
Appropriation (000's)	16,192	15,597	16,238	641
Reimbursements (000's)	3,153	2,742	3,004	262
Total Budget Authority	19,345	18,339	19,242	903
FTP Employment				
Direct	139	139	139	0
Reimbursable	22	24	24	0
Total FTP:	161	163	163	0
FTE Employment				
Direct	156	167	167	0
Reimbursable	20	24	24	0
Total FTE:	176	191	191	0



Executive Office of the President
Office of Administration

Total EOP Appropriations
Direct Funds

Fiscal Years 1978 – 1987
(IN THOUSANDS OF DOLLARS)

III. APPROPRIATION LANGUAGE

Executive Office of the President
Office of Administration

Salaries and Expenses

For necessary expenses for the Office of Administration; [$15,597,000] $16,238,000 including services as authorized by 5 U.S.C 3109 and 3 U.S.C. 107, and hire of passenger motor vehicles.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

6

Office of Administration
Salaries and Expenses

Program and Financing (in thousands of dollars)

Identification code 11-0038-0-1-802	1985 actual	1986 estimate	1987 estimate
Program by activities:			
Direct program:			
00.01 Director's office	395	390	390
00.02 Personnel management	550	527	589
00.03 Financial management	966	964	996
00.04 Administrative operations	5,712	5,122	5,458
00.05 Library and information services	1,260	1,342	1,360
00.06 Automated systems (operations)	7,309	7,252	7,445
00.91 Total direct program	16,192	15,597	16,238
01.01 Reimbursable program:	3,153	2,742	3,004
10.00 Total obligations	19,345	18,339	19,242
Financing:			
11.00 Offsetting collections from: Federal funds	-3,153	-2,742	-3,004
25.00 Unobligated balance lapsing	48	—	—
40.00 Budget authority (appropriation)	16,240	15,597	16,238
Relation of obligations to outlays:			
71.00 Obligations incurred, net	16,192	15,597	16,238
72.40 Obligated balance, start of year	4,558	5,579	6,047
74.40 Obligated balance, end of year	-5,579	-6,047	-6,534
77.00 Adjustments in expired accounts	-218	—	—
90.00 Outlays	14,953	15,129	15,751

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Office of Administration
Salaries and Expenses

Summary of Budget Authority and Outlays (in thousands of dollars)

Identification code 11-0038-6-1-802	19 85 actual	19 86 estimate	19 87 estimate
Enacted/requested:			
Budget authority	16,240	15,597	16,238
Outlays	14,953	15,129	15,751
Reduction pursuant to P.L. 99-177:			
Budget authority	—	-671	—
Outlays	—	-411	-260
Total:			
Budget authority	16,240	14,926	16,238
Outlays	14,953	14,718	15,491

Office of Administration

Program and Performance

This office provides common administrative support and services to all agencies within the Executive Office of the President, and upon request, assists the White House Office in performing its role of providing those administrative services which are primarily in direct support of the President.

These services include personnel and financial management; administrative services such as mail distribution, messenger services, printing and duplicating, and procurement; maintaining library and information retrieval facilities; and computer operations and related support services, including systems development.

ADP systems development will be funded by reimbursements from users.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Office of Administration
Salaries and Expenses

Object Classification (in thousands of dollars)

Identification code 11-0038-0-1-802		19 85 actual	19 86 estimate	19 87 estimate
	Direct obligations:			
	Personnel compensation:			
11.1	Full-time permanent	3,910	4,279	4,439
11.3	Other than full-time permanent	416	279	279
11.5	Other personnel compensation	50	65	65
11.8	Special personal services payments	17	27	27
11.9	Total personnel compensation	4,393	4,650	4,810
12.1	Personnel benefits: Civilian	517	543	556
21.0	Travel and transportation of persons	13	30	30
22.0	Transportation of things	37	46	46
23.1	Standard level user charges	1,489	1,540	1,540
23.3	Communications, utilities, and miscellaneous charges	3,550	3,112	3,268
24.0	Printing and reproduction	759	737	793
25.0	Other services	4,229	3,924	4,095
26.0	Supplies and materials	655	540	550
31.0	Equipment	550	475	550
99.0	Subtotal, direct obligations	16,192	15,597	16,238
99.0	Reimbursable obligations	3,153	2,742	3,004
99.9	Total obligations	19,345	18,339	19,242

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Office of Administration
Salaries and Expenses

Personnel Salary

Identification code 11-0038-0-1-802	1985 actual	1986 estimate	1987 estimate
Direct:			
Total number of full-time permanent positions	139	139	139
Total compensable workyears:			
Full-time equivalent employment	156	167	167
Full-time equivalent of overtime and holiday hours	2	2	2
Average GS grade	9.01	9.04	9.04
Average GS salary	27,316	27,490	27,490
Average salary of ungraded positions	35,843	35,850	35,850
Reimbursable:			
Total number of full-time permanent positions	22	24	24
Total Compensable Workyears:			
Full-time equivalent employment	20	24	24
Average GS grade	11.59	11.67	11.67
Average GS salary	34,668	34,950	34,950

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Office of Administration
Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code 11-0038-6-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	—	-671	—
Financing:			
40.00 Budget authority (appropriation)	—	-671	—
Relation of obligations to outlays:			
71.00 Obligations incurred, net	—	-671	—
72.40 Obligated balance, start of year	—	—	-260
74.40 Obligated balance, end of year	—	260	—
90.00 Outlays	—	-411	-260

STANDARD FORM 306
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
306-103

Office of Administration
Salaries and Expenses

DETAIL OF PERMANENT POSITIONS

11-0038-0-1-802	1985 actual	1986 estimate	1987 estimate
GS/GM-15	8	8	8
GS/GM-14	9	9	9
GS/GM-13	20	21	21
GS-12	11	12	12
GS-11	11	11	11
GS-10	1	1	1
GS-9	24	24	24
GS-8	5	5	5
GS-7	23	23	23
GS-6	13	13	13
GS-5	11	11	11
GS-4	5	5	5
GS-3	2	2	2
Subtotal	143	145	145
Ungraded	18	18	18
Total permanent positions	161	163	163
Unfilled positions, end of year	0	0	0
Total permanent employment, end of year	161	163	163

III. SUMMARY TABLES

Executive Office of the President
Office of Administration

Summary of Budget Authority by Object Class
FY 1985-1987
Direct Funds

BUDGET OVERVIEW
(in thousands of dollars)

	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY'86-'87
Personnel compensation:				
Full-time permanent	3,910	4,279	4,439	160
Other than full-time permanent	416	279	279	0
Other personnel compensation	50	65	65	0
Special personal services payments	17	27	27	0
Total personnel compensation	4,393	4,650	4,810	160
Personnel benefits: Civilian	517	543	556	13
Total compensation & benefits	4,910	5,193	5,366	173
Travel & transportation of persons	13	30	30	0
Transportation of things	37	46	46	0
Standard level user charges	1,489	1,540	1,540	0
Comm., util., & misc. chgs.	3,550	3,112	3,268	156
Printing & reproduction	759	737	793	56
Other services	4,229	3,924	4,095	171
Supplies & materials	655	540	550	10
Equipment	550	475	550	75
Total direct program	16,192	15,597	16,238	641
Lapse	48	—	—	—
Budget Authority	16,240	15,597	16,238	641

Office of Administration

Summary of Changes from FY 1986 to FY 1987
By Object Class (in thousands of dollars)
Direct Funds

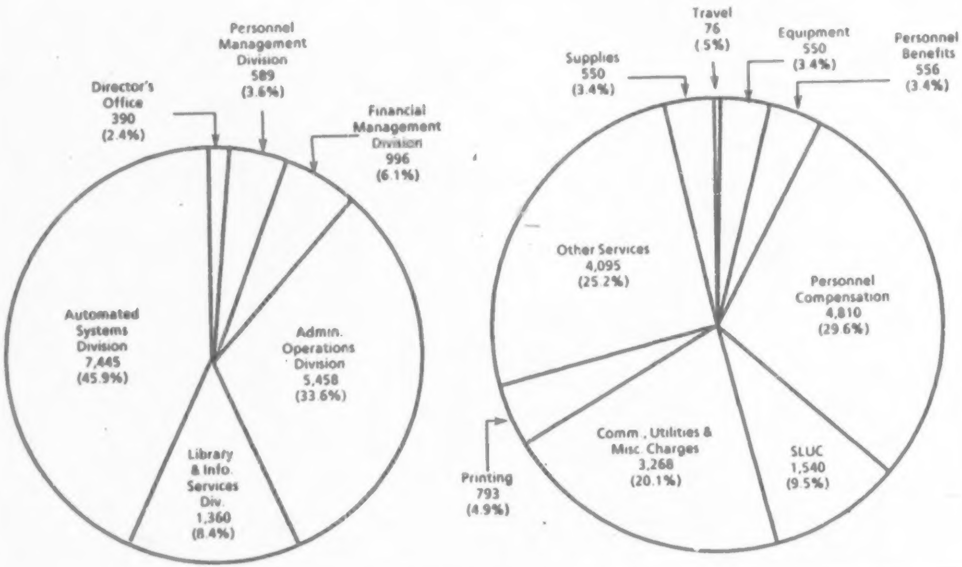
FY 1985 Budget Authority			$16,240	
	Increases	Decreases		
FY 1986 BASE			$15,597	
Personnel compensation	$160	$0		
Personnel benefits	13	0		
Total comp. & bene.	173	0		
Travel & transportation of persons	0	0		
Transportation of things	0	0		
SLUC	0	0		
Comm., util., & misc. chgs.	156	0		
Printing & reproduction	56	0		
Other services	171	0		
Supplies & materials	10	0		
Equipment	75	0		
Total	$641	$0		
Net Increase/Decrease			$ 641	
Total FY 1987 Request			$ 16,238	4.11%

Executive Office of the President
Office of Administration

Funding Request by Program Activity and Classification

Fiscal Year 1987

(IN THOUSANDS OF DOLLARS)



Office of Administration

Summary of Budget Authority by Program
FY 1985-FY 1987
Direct Funds

BUDGET OVERVIEW
(Dollars in 000's)

	Actual FY 1985	Estimated FY 1986	Budget Request FY 1987	Net Change FY 86-87
Program by Activities: Direct Program:				
1 Director's Office	$395	$390	$390	$0
2 Personnel Management	550	527	589	62
3 Financial Management	966	964	996	32
4 Administrative Oper.	5,712	5,122	5,458	336
5 Library & Info. Svcs.	1,260	1,342	1,360	18
6 Automated Systems	7,309	7,252	7,445	193
Total Direct Program	$16,192	$15,597	$16,238	$641

Office of Administration

Personnel Summary
Full-Time Equivalent
(Direct and Reimbursable)

FTE by Agency	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY '86-'87
Direct FTP	139	139	139	0
Other	17	28	28	0
Total Direct FTE	156	167	167	0
Reimbursable FTP	20	24	24	0
Other	0	0	0	0
Total Reimbursable FTE	20	24	24	0
Total OA FTE	176	191	191	0

V. EXPLANATION AND JUSTIFICATION OF CHANGES BY OBJECT CLASS FOR FY 1987

Executive Office of the President
Office of Administration
(in thousands of dollars)

I. Increases to Maintain Current Services & Request Levels $641

FY'86	FY'87		Net Change
$5,193	$5,366	Personnel compensation and benefits An additional $173 is needed to cover partial restoration (65.8 percent) of the 5 percent pay cut which was not restored in FY 1986. OA's total request of $5,366 will provide for 139 full-time permanent (FTP) staff and 28 other positions for a total of 167 FTE. This staffing level remains unchanged from FY 1986	$ 173
$30	$30	Travel and transportation of persons The existing funding level is sufficient to meet the agency's travel needs to various training programs as well as local transportation within the metropolitan area.	$ 0
$46	$46	Transportation of things There is no change in this category. The current funding level is sufficient to cover the cost and usage of commercial courier services and transportation companies.	$ 0
$1,540	$1,540	Standard level user charge (SLUC) The Office of Administration is housed in two primary locations--the Old and New Executive Office Buildings (OEOB & NEOB). Our space requirements and costs remain unchanged.	$ 0
$3,112	$3,268	Communications, utilities, and miscellaneous charges The additional request of $156 or 5 percent is needed to cover the increased cost of 1) commercial and FTS telephone	$ 156

and data lines; 2) charges by GSA for after hour utilities; and, 3) additional direct disc storage space requirements for the mainframe computer facility resulting from the successful transfer of administrative systems from the WHCA computer to the EOPCC.

$737	$793	Printing and reproduction	$ 56
		An additional $56 is needed to cover the 7 percent cost increase by the Defense Printing Service for their operational support in OA's two printing facilities.	
$3,924	$4,095	Other services	$ 171
		For FY 1987, an additional $171, or 4.4 percent, is requested to cover the increased workload and costs associated with the operation of the EOPCC. Aside from the annual cost increases for the facility contract, additional resources are required to support the administrative systems recently transferred from the WHCA computer facility to OA. In addition, more funds are required to cover the EOP's share of increased costs to be reimbursed to the Treasury Department for the TPIS system (payroll and personnel processing).	
$540	$550	Supplies and materials	$ 10
		While efficiencies continue to increase and the cost of conventional office supplies is reduced, the increased workload placed on the EOPCC necessitates this increase for ADP related supplies.	
$475	$550	Equipment	$ 75
		This funding level will enable OA to meet the requirements of the FY 1987 equipment plan which is primarily in support of the EOPCC and OA's internal office automation efforts.	
$15,597	$16,238	Total all object classes	$ 641

Mr. ROYBAL. I would like now to go to the Special Assistance to the President.

Mr. HICKS. Thank you, Mr. Chairman. The appropriation request for Special Assistance to the President will enable the Vice President to provide assistance to the Chief Executive, including directed and special, presidentially assigned functions. Additionally, the Vice President, through Cabinet membership and White House contact, is informed on a continuing basis regarding presidential responsibilities and, in the President's absence, serves as the Chairman of the Cabinet.

In addition to his specific presidential assignments, the Vice President also serves as an advisor to the President on matters of national importance, and assists in ceremonial functions and in the conduct of international affairs.

For Fiscal Year 1987, an appropriation of $1,849,000 is being requested for the Special Assistance to the President account. This request is $55,000 greater than the Fiscal Year 1986 appropriation of $1,794,000. Reflected in this request is $10,000 for partial restoration of the proposed 1986 pay reduction, $20,000 is needed to offset the rising cost of after hour utilities and telephone services, and the remaining $25,000 will ensure continuation of our office automation efforts.

Those funds will provide for 24 million full-time permanent employees. No additional positions are being requested.

In meeting the requirements of the Gramm-Rudman-Hollings legislation, the Office of the Vice President absorbed a $77,000 budgetary reduction.

In closing, I would like to express my gratitude to you and this Committee for your continual support of the Vice President during the past year, which included a significant transition in staffing.

I would like to add to my prepared statement, that since we appeared before the Committee a year ago, a very historic event took place. When the President was in the hospital last summer, the President, under the Fifth Amendment, transferred the power of the presidency to the Vice President to be Acting President. For a period of hours at least, while the President was undergoing surgery, for the first time in history there was an Acting President. A historical note that I would just like to add for the record that underscores the importance of this account.

DUTIES OF THE VICE PRESIDENT

Mr. ROYBAL. Can you tell me then what functions does this office perform for the Vice President and how does it differ from the legislative staff he has for duties in the Senate?

Mr. HICKS. Constitutionally, the Vice President is unique in that he is an official of two branches of government. The appropriation that we are requesting here today, Special Assistance to the President, will support the Vice President in his Executive Branch capacity as an assistant to the President performing functions that the President assigns.

I can't speak to the exact functions that his staff as President of the Senate performs, but they are more directed toward his legislative activities. In his Executive Branch capacity, the Vice President has undertaken several activities over the past five years on behalf of the President. The most recent one was the Vice President Task Force on Combatting Terrorism, which recently submitted its report to the President.

DRUG INTERDICTION

Mr. **Roybal**. Can you tell the Committee to what extent this office is involved in the South Florida Drug Task Force?

Mr. **Hicks**. The South Florida Drug Task Force was set up I believe in 1982. It has now been succeeded by the National Narcotics Border Interdiction System which is overseen by the Vice President. This system, in effect, expanded the experience they had with the South Florida Task Force nationwide.

The Vice President continues to be very involved in a coordinating capacity among the various federal agencies that have responsibility for drug interdiction, and continues to travel and conduct meetings. I do not know the exact amount of time the Vice President spends on this activity, but it is significant. I do know that he continues to be very involved and very concerned.

Mr. **Roybal**. I am very much interested in the interdiction of narcotics. And I'm surprised to see that the Administration has decreased funding for a department that is directly involved in the interdiction of narcotics.

That, of course, has nothing to do with the offices that we are now discussing. But I hope that as time goes on that there is a change in that, in that more money is made available, because I firmly believe that narcotics is undermining the moral fiber of our nation.

There isn't a single school that I know of—in fact, after some research I think I can well say that there isn't a single junior high school or high school in the country, regardless of where it is, that hasn't had at one time or another some problem with narcotics. This junk is coming in, from wherever it comes in from, and it's going into our schools, into our communities, business people, athletes, everyone seems to be involved. The demand for this is growing on a daily basis.

And we don't need a military enemy. Our biggest enemy is narcotics. If we don't do something about it very quickly, it's going to ruin us.

Mr. **Hicks**. And I think we should.

Mr. **Roybal**. But that has nothing to do with this request. I just wanted to make that comment.

I would like to have, Mr. Hicks, a chart or something that will show the pay levels for the positions in that office. You don't have to mention the names of anyone, but the titles and the pay so we will know the salary levels.

Mr. **Hicks**. We have provided that in the past, and we will be happy to do that again.

Mr. **Roybal**. Yes. We ask that every year, just something that is needed for the record.

Mr. **Hicks**. Yes, sir.

Mr. **Roybal**.We would appreciate it if you do that.

Mr. **Hicks**. Yes, sir.

[The information follows:]

Special Assistance to the President, Staff Salary Order, As of Feb. 1, 1986

Number of employees:	Salary
1	75,100
2	73,600
1	70,558
1	62,500
1	42,000
2	37,000
1	30,000
1 (part-time)	29,333
1	27,990
1	26,000
2	24,000
1	20,700
1	19,508
1	19,000
1	18,000
Total, 18.	

Mr. ROYBAL. And I thank you, Mr. Hicks, for the testimony.

[The justifications follow:]

Executive Office of the President
Special Assistance to the President
Congressional Submission
FY 1987

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I. GENERAL STATEMENT AND SUMMARY OVERVIEW

Executive Office of the President
Special Assistance to the President

The Fiscal Year 1987 Vice President budget request is for $1,849,000 which compares to the current proposed level of $1,794,000. This represents an increase of $55,000.

In part, this request will provide for 24 full-time equivalent positions which is the same staffing level authorized during FY 1986.

The 1987 budget request is needed to enable the Vice President to provide assistance to the President. The assistance takes the form of directed and special, presidentially assigned functions. The Vice President, through Cabinet membership and White House contact, is involved on a continuing basis regarding Presidential responsibilities.

Among the Vice President's specifically directed functions are the following:

- o Member of the President's Cabinet, acting as chairman when the President is absent;
- o Statutory Member of the National Security Council;
- o Chairman of the Special Situation Group;
- o Chairman of the Presidential Task Force on the Crime Problem in South Florida including the National Narcotics Border Interdiction System;
- o Chairman of the Vice President's Task Force on Combatting Terrorism;
- o Ex Officio member of all Cabinet Councils; and
- o Member of the Board of Regents of the Smithsonian Institutions.

These funds are also required for the Office of the Vice President which advises, assists, and supports the Vice President in the areas of domestic policy, national security affairs, counsel, administration,press, scheduling/advance, and special projects/assignments. Additionally, support is provided for Mrs. Bush.

BUDGET OVERVIEW
(in thousands of dollars)

	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY'86-'87
Budget Authority	1,676	1,794	1,849	55
FTE Employment	21	24	24	-

II. APPROPRIATION LANGUAGE

Executive Office of the President
Special Assistance to the President

Salaries and Expenses

For necessary expenses to enable the Vice President to provide assistance to the President in connection with specially assigned functions, services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 106, including subsistence expenses as authorized by 3 U.S.C. 106, which shall be expended and accounted for as provided in that section; and hire of passenger motor vehicles; [$1,794,000] $1,849,000.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Special Assistance to the President
Supplies and Expenses

Program and Financing (in thousands of dollars)

Identification code 11-1454-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	1,674	1,794	1,849
Financing:			
25.00 Unobligated balance lapsing	2	—	—
40.00 Budget authority (appropriation)	1,676	1,794	1,849
Relation of obligations to outlays:			
71.00 Obligations incurred, net	1,674	1,794	1,849
72.40 Obligated balance, start of year	144	170	224
74.40 Obligated balance, end of year	-170	-224	-279
77.00 Adjustments in expired accounts	-17	—	—
90.00 Outlays	1,631	1,740	1,794

Summary of Budget Authority and Outlays
(in thousands of dollars)

Enacted/requested:			
Budget authority	1,676	1,794	1,849
Outlays	1,631	1,740	1,794
Reduction pursuant to P.L. 99-177:			
Budget authority	—	-77	—
Outlays	—	-67	-10
Total:			
Budget authority	1,676	1,717	1,849
Outlays	1,631	1,673	1,784

Special Assistance to the President

Program and Performance

These funds are to be used by the Vice President to carry out responsibilities assigned him by the President and by various statutes.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Special Assistance to the President
Salaries and Expenses

Object Classification (in thousands of dollars)

Identification code 11-1454-0-1-802		1985 actual	1986 estimate	1987 estimate
	Personnel compensation:			
11.1	Full-time permanent	817	865	875
11.3	Other than full-time permanent	44	30	30
11.8	Special personal services payments	37	72	72
11.9	Total personnel compensation	898	967	977
12.1	Personnel benefits: Civilian	103	108	108
21.0	Travel and transportation of persons	144	145	145
22.0	Transportation of things	5	2	2
23.1	Standard level user charges	282	282	282
23.3	Communications, utilities, and miscellaneous charges	175	175	195
24.0	Printing and reproduction	1	5	5
25.0	Other services	20	35	55
26.0	Supplies and materials	35	35	40
31.0	Equipment	11	40	40
99.9	Total obligations	1,674	1,794	1,849

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

Special Assistance to the President
Salaries and Expenses

Personnel Summary

Identification code 11-1454-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Total number of full-time permanent positions	17	24	24
Total compensable workyears: Full-time equivalent employment	21	24	24
Average salary of ungraded positions	$38,463	$37,609	$38,043

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

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Special Assistance to the President
Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code 11-1454-6-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	—	-77	—
Financing:			
40.00 Budget authority (appropriation)	—	-77	—
Relation of obligations to outlays:			
71.00 Obligations incurred, net	—	-77	—
72.40 Obligated balance, start of year	—	—	-10
74.40 Obligated balance, end of year	—	10	—
90.00 Outlays	—	-67	-10

STANDARD FORM 306
July 1965, Bureau of the Budget
Circular No. A-11, Revised.
306-103

8
Special Assistance to the President
Salaries and Expenses

DETAIL OF PERMANENT POSITIONS

11-1454-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Ungraded	22	24	24
Total permanent positions	22	24	24
Unfilled positions, end of year	4	—	—
Total permanent employment, end of year	18	24	24

III. SUMMARY TABLES

Executive Office of the President
Special Assistance to the President

Summary of Budget Authority by Object Class
FY 1985-FY 1987

BUDGET OVERVIEW
(in thousands of dollars)

	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY`86-`87
Personnel compensation:				
Full-time permanent	817	865	875	10
Other than full-time permanent	44	30	30	0
Special personal services payments	37	72	72	0
Total personnel compensation	898	967	977	10
Personnel benefits: Civilian	103	108	108	0
Total compensation & benefits	1,001	1,075	1,085	10
Travel & transportation of persons	144	145	145	0
Transportation of things	5	2	2	0
Standard level user charge	282	282	282	0
Comm., util., & misc. chgs.	175	175	195	20
Printing & reproduction	1	5	5	0
Other services	20	35	55	20
Supplies & materials	35	35	40	5
Equipment	11	40	40	0
Total program	1,674	1,794	1,849	55
Lapse	2	—	—	—
Budget authority	1,676	1,794	1,849	55

Special Assistance to the President

Summary of Changes from FY 1986 to FY 1987
By Object Class (in thousands of dollars)

	Increases	Decreases		
FY 1985 Budget Authority			$ 1,676	
FY 1986 BASE			$ 1,794	
Personnel compensation	$10	$0		
Personnel benefits	0	0		
Total comp. & bene.	10	0		
Travel & transportation of persons	0	0		
SLUC	0	0		
Rental payments to others	0	0		
Comm., util., & misc. chgs.	20	0		
Printing & reproduction	0	0		
Other services	20	0		
Supplies & materials	5	0		
Equipment	0	0		
Total	$55	$0		
Net Increase/Decrease			$ 55	
Total FY 1987 Request			$ 1,849	3.07%

IV. EXPLANATION AND JUSTIFICATION OF CHANGES BY OBJECT CLASS FOR FY 1987

Executive Office of the President
Special Assistance to the President
(in thousands of dollars)

I. Increases to Maintain Current Services & Request Levels $55

FY'86	FY'87		Net Change
$1075	$1085	Personnel compensation and benefits	$ 10
		An additional $10 is requested to cover the annualized portion of the 5 percent pay reduction proposed in FY 1986. These funds will provide for 24 full-time equivalent positions--the same as the FY 1986 authorized level.	
$145	$145	Travel and transportation of persons	$0
		The existing funding level is sufficient to meet the travel requirements of the Vice President and his supporting staff.	
$2	$2	Travel and transportation of things	$ 0
		This funding level will provide the operational requirements for commercial courier services.	
$282	$282	Standard level user charge (SLUC)	$ 0
		These funds are required for office space occupied in the Old Executive Office Building (OEOB). The space and funding requirements remain unchanged.	
$175	$195	Communications, utilities, and miscellaneous charges	$ 20
		An additional $20 is requested to cover the increased cost of commercial and government telephone service (ATT, C&P, and FTS) and GSA costs for after hour utilities. Also included is funding for data line	

		requirements to support the office automation equipment.	
$5	$5	Printing and reproduction	$ 0
		These funds provide for the government and commercial printing requirement of the Vice President and his staff. No additional funds are necessary.	
$35	$55	Other services	$ 20
		The requested funding level is necessary to cover the increased costs of 1) ADP maintenance contracts, 2) to ensure the continuation of systems development work associated with the long-range office automation plan, and 3) to meet increased utilization of on-line commercial data base services by the Vice President's staff.	
$35	$40	Supplies and materials	$ 5
		The funds are required to cover the increased cost of general office and ADP supplies including off-the-shelf software.	
$40	$40	Equipment	$ 0
		Maintaining the existing funding level will ensure the continuation of our planned office automation equipment schedule during FY 1987.	
$1,794	$1,849	Total all object classes	$ 55

Mr. **Roybal**. All right. We will now take the Unanticipated Needs.

Mr. **Hicks**. Thank you, Mr. Chairman. In 1940, Congress recognized the need to provide the President with funds to meet unbudgeted contingencies. The sum of $1 million has been provided to meet the President's unanticipated needs since 1962. Once again, we are requesting the same amount.

Extreme prudence is always used when making an allocation from this fund. Each request is reviewed by the Office of Management and Budget to ensure that the purpose is consistent with the Administration's policies. Each request is also verified for the accuracy of the estimated need as well as to confirm that no alternative resources exist.

All requests are then sent to the President with OMB's recommendation. The President makes the final decision as to whether the allocation should be made. This process ensures that allocations are made for only the most important purposes.

In 1985 and to date in Fiscal Year 1986, allocations have been made to Special Assistance to the President, the Vice President's Office, for the creation and operation of the Vice President's Task Force on Combatting Terrorism.

The Fiscal Year 1986 authority for Unanticipated Needs was reduced $43,000 for a new Fiscal Year 1986 authority of $957,000 to comply with the Gramm-Rudman-Hollings legislation.

Mr. **Roybal**. Thank you, Mr. Hicks.

Mr. **Hicks**. Mr. Chairman, I would be happy to provide you also with a product of the Unanticipated Needs account which is the report of the Vice President's Task Force on Combatting Terrorism.

ALLOCATIONS

Mr. **Roybal**. Thank you. We would like to have for the record, however, the amount that has been expended up to this point out of the '86 budget.

Ms. **Pearson**. I can tell you this exactly.

Mr. **Roybal**. All right.

Ms. **Pearson**. In Fiscal Year '86, $260,000 was allocated to the Task Force, but to date only $155,000 has been spent. The Commission has closed out, and I do not anticipate any more expenditures. In 1985, Unanticipated Needs allocated $215,000 to the Task Force and only $138,000 was expended. So, of the entire anticipated expenditure for this program, we used approximately 60 percent.

Mr. **Roybal**. Are these amounts ever repaid?

Ms. **Pearson**. No.

Mr. **Roybal**. They are not?

Ms. **Pearson**. Unanticipated Needs is a stand alone appropriation.

Mr. **Roybal**. I see.

Mr. **Hicks**. It's conceivable that a situation could come up where immediate funding would be required and an agency might then reimburse later on. But we have not received any request like that.

Mr. **Roybal**. I see. But the one that is actually responsible for keeping the accounts is your office?

Ms. **Pearson**. Yes.

Mr. **Hicks**. Ursula maintains the accounts.

Mr. **Roybal**. And you are the accountant and——

Ms. **Pearson**. Yes.

Mr. **Roybal** [continuing]. The keeper of the books.

Ms. **Pearson**. And representative of the taxpayers, Mr. Chairman.

Mr. **Roybal**. I would like to request that in the future you keep the Committee informed of allocations from the account as they are made, if that is possible. I see that there are not too many items that you would have to be reporting, but we would like to know just where it is.

Mr. **Hicks**. I did contact the Committee's staff before the President approved the appropriation.

Mr. **Roybal**. Right. But the President does make the final decision as to what organization gets the money.

Mr. **Hicks**. Yes, sir. It is his final decision.

Mr. **Roybal**. So, the real responsibility then is with the President.

Mr. **Hicks**. Yes, sir.

Mr. **Roybal**. And then the accounting is carried on as a separate item, and you in fact no doubt report back to the President as to what has been spent and so forth——

Ms. **Pearson**. Right.

Mr. **Roybal** [continuing]. And give him an accounting of everything that goes on.

Ms. **Pearson**. And whatever is not spent reverts back to the Treasury.

Mr. **Roybal**. Yes.

Ms. **Pearson**. A million dollars——

Mr. **Hicks**. That's an important point, that the amount that is not spent in the million dollars is not a carry over——

Mr. **Roybal**. And it hasn't reached a million dollars for how long?

Ms. **Pearson**. Not in the seven or eight years that I have been here Mr. Chairman. I have never used it.

Mr. **Roybal**. It has been a while and the full amount has never been used.

Ms. **Pearson**. Not that I can remember.

Mr. **Roybal**. Mr. Skeen, do you have any questions?

Mr. **Skeen**. I have no questions, Mr. Chairman. I'm sure that you have done your usual excellent job. I'm sorry I wasn't here when you started.

Mr. **Roybal**. I would like to thank you, Mr. Hicks, and your colleagues for your testimony this morning, and we will take it under advisement.

Mr. **Hicks**. Thank you, Mr. Chairman.

[The justifications and biographies follow:]

FUNDS APPROPRIATED TO THE PRESIDENT

UNANTICIPATED NEEDS

Justification of Estimates
for the 1987
Appropriations Request

PREPARED FOR THE COMMITTEE ON APPROPRIATIONS

I. Appropriations Language

1987 Regular Appropriations

FUNDS APPROPRIATED TO THE PRESIDENT
UNANTICIPATED NEEDS

For expenses necessary to enable the President to meet unanticipated needs, in furtherance of the national interest, security, or defense which may arise at home or abroad during the current fiscal year, $1,000,000.

II. General Statement

SUMMARY

The President requests $1,000,000 for Unanticipated Needs for FY 1987. This is the same amount as requested for 1986.

BACKGROUND

Congress recognized in 1940 the need of the President to have limited funds available to meet unplanned and unbudgeted contingencies. As the head of a complex national government, the President will from time to time confront unforeseen problems demanding immediate executive action.

The President is the only official who may authorize expenditures from this account, and the Director of the Office of Management and Budget maintains strict control to assure that only unforeseen priorities are financed.

In 1975, the Congress changed the account title from "Emergency Fund for the President" to "Unanticipated Needs." Since 1962, with the exception of three years, Unanticipated Needs has been funded at $1,000,000.

PRIOR USE

Since it is not possible to predict how the 1987 funds will be expended, we must justify the requested amount by citing examples of actual use of the fund in prior years. These uses have occurred under tight budget control and covered unanticipated needs not met from regular budget accounts nor available in a timely fashion through the supplemental budget process. The limited use of these funds emphasizes the prudence that is exercised in allocating these funds only for the highest priority needs.

In FY-1983 allocations were made to the Special Task Force on South Florida; the Agency for International Development to fund a study by the bipartisan American Political Foundation to determine how the United States could best contribute as a nation to the global campaign for democracy, and to the White House Office to provide funding for Presidential travel and other expenses related to the President's Private Sector initiative Program and the President's Quality Education Initiative.

In FY-1984 an allocation was made to the White House Office to provide funding for the transfer of computer systems from the White House Communication Agency to the EOP Computer Center. This conversion included the Presidential Personnel systems, the White House Correspondence Tracking system, the Presidential Diary and the Presidential Gift system. This was the only allocation made in 1984.

In FY-1985 and FY-1986 allocations were made to the Vice President's office for the creation and operation of a task force to combat terrorism. The terrorism task force was established by President Reagan in an effort to review how the U.S. Government can better combat terrorism and ways in which the U.S. can work in cooperation with other governments in the fight against terrorism.

III. Summary Tables

BUDGET OVERVIEW
(in thousands of dollars)

	1985 Actual	1986 Est.	1987 Est.
Budget Authority	1,000	1,000	1,000
Obligations	138	260	—
Full-time Equivalent Employment	0	0	0
Reduction Pursuant to Public Law 99-177	0	–43	0
Budget Authority	1,000	957	1,000

This reduction is required by the Balanced Budget and the Emergency Deficit Control Act of 1985.

PROGRAM AND FINANCING
(in thousands of dollars)

	1985 Actual	1986 Est.	1987 Est.
Program by activities:			
1. Special Assistance to the President, Salaries and Expenses	$138	$260	
2. Reserved for Future Allocations	—	$740	$1,000
Total Obligations	$138	$1,000	$1,000
Financing:			
Unobligated balance lapsing	862	—	—
Budget authority (appropriation)	1,000	1,000	1,000
Relation of obligations to outlays:			
Obligations incurred, net	138	1,000	1,000
Obligated balance, start of year	183	140	[illegible]
Obligated balance, end of year	-140	-140	-140
Adjustments in expired accounts	-19	—	—
Outlays	162	1,000	1,000

PROGRAM AND FINANCING
(in thousands of dollars)

	1985 Actual	1986 Est.	1987 Est.
Enacted/requested:			
Budget Authority	1,000	1,000	1,000
Outlays	162	1,000	1,000
Reduction pursuant to P.L. 99-177:			
Budget Authority	—	–43	—
Outlays	—	–38	–5
Total:			
Budget Authority	1,000	957	1,000
Outlays	162	962	995

OBJECT CLASSIFICATION
(in thousands of dollars)

		1985 Actual	1986 Est.	1987 Est.
	ALLOCATION ACCOUNTS			
11.1	Personnel compensation: full-time permanent	11	39	
21.0	Travel and transportation of persons	14	25	
22.0	Transportation of things	1	1	
23.1	Standard Level User Charges	15	30	
23.3	Communications, utilities and miscellaneous charges	33	55	
24.0	Printing and reproduction	1	50	
25.0	Other services	49	50	
26.0	Supplies and materials	4	5	
31.0	Equipment	10	5	
92.0	Undistributed, reserved for future allocations	—	740	1,000
99.9	Total obligations	138	1,000	1,000
	Reduction Pursuant to P.L. 99-177	0	-43	0
	Total	128	957	1,000

PERSONNEL SUMMARY

ALLOCATION ACOUNTS			
Total number of full-time permanent positions	—	—	—
Total compensable workyears: full-time equivalent employment	—	—	—
Average salary of ungraded positions	—	—	—

BIOGRAPHY
OF
CHRISTOPHER HICKS

Christopher Hicks was appointed as the Deputy Assistant to the President for Administration on February 3, 1985. He also serves as Director of the Office of Administration. Before his appointment, Mr. Hicks served as the Executive Assistant to the Secretary of Treasury and Executive Secretary of the Treasury Department.

From May 1982 to December 1983, Mr. Hicks, 35, was the Associate Director (Economic and Transportation Group) of the Office of Presidential Personnel at the White House. From March 1981 to May 1982, he was Associate Counsel in the Office of the Counsel to the President.

Prior to joining the Reagan Administration, Mr. Hicks was a trial attorney with the firm of Fulbright & Jaworski in Houston, Texas. He also served for a year as a law clerk to the Supreme Court of Texas.

Mr. Hicks received his Bachelor of Arts degree from Colorado College in Colorado Springs, Colorado in 1972 and earned his J.D. from Southern Methodist University in 1977. At SMU, he was an editor of the law review, an officer of the student government and a member of Barristers (an honorary scholastic/service organization).

Mr. Hicks is married to the former Elizabeth Bellamy and they have two sons.

BIOGRAPHY
OF
URSULA H. PEARSON

Ursula H. Pearson is the Director for Financial Management for the Executive Office of the President, Office of Administration. She has served in this position since April 1979. She is responsible for Budget, Accounting, Travel, Payroll, and Imprest Fund for twelve appropriations of the Executive Office of the President.

Mrs. Pearson started her government accounting career in January 1962 with the Department of the Interior, National Park Service. In 1971, she transferred to the Office of Naval Research as an operating accountant. In 1975 she was assigned to the Navy Materiel Support Activity as a Systems Accountant in charge of financial systems development for major Navy accounting systems.

Mrs. Pearson was born on August 31, 1924, in Breslau, Germany. She received her degree in Languages in 1947 from the University of Berlin with a major in English. From 1948 to 1951 she owned a translating and interpreting office in Berlin. In 1951 she came to the U.S. where she was the proprietor of a restaurant in Long Island, New York. She served with the Air Force in a civilian capacity in Wiesbaden, Germany from 1960 to 1966. She attended SW State College in Oklahoma and continued her accounting studies at the University of Virginia. She is a member of the Association of Government Accountants. Mrs. Pearson and her husband, John, live in Alexandria, Virginia.

BIOGRAPHY
OF
RONNIE R. RASMUSSEN

Ronnie R. Rasmussen is the Budget Officer for the Office of Administration, Executive Office of the President, and has served in this capacity since August 1981.

Prior to his appointment to this position, Mr. Rasmussen was Deputy Chief of the Financial Management Division with the U.S. Secret Service, an organization in which he has served in varying financial related positions since 1973. Mr. Rasmussen specifically assisted in the automation of their financial accounting system, served as the Staff Assistant to the Assistant Director for Administration and in addition, acted as the Administrative Coordinator for the 1980 Presidential Campaign.

Mr. Rasmussen was born January 19, 1946, and raised in Akron, Ohio. While serving in the U.S. Navy, he was assigned to the White House Communications Agency from 1965 to 1969. He then worked for the National Security Council while attending the American University, where he obtained his Bachelor of Science degree in Accounting in 1973.

Mr. Rasmussen has been a member of the Association of Government Accountants since 1973, and is a recipient of the Presidential Service Badge and Certificate.

WEDNESDAY, APRIL 9, 1986.

NATIONAL CRITICAL MATERIALS COUNCIL

WITNESS

THOMAS G. MOORE, COUNCIL MEMBER, NATIONAL CRITICAL MATERIALS COUNCIL

Mr. ROYBAL. Mr. Moore, how are you today?

Mr. MOORE. Fine, Mr. Chairman.

Mr. ROYBAL. All right. The Committee will now hear from the National Critical Materials Council, and ask you, Mr. Moore, to proceed in any manner that you may desire.

Mr. MOORE. Thank you. Thank you for the opportunity to appear before your Committee to discuss the National Critical Materials Council.

The Council, as you know, was created by the 1984 Critical Materials Act. We have been functioning since November of last year, and on January 14th held our first public hearing, which was well attended by representatives of the mining and minerals processing community, groups concerned with national security and minerals availability issues, and groups concerned with advanced materials research and development. A wide range of concerns was expressed.

Since then, the Council and staff have held numerous indepth discussions with interested individuals, both inside and outside the government. And the Council recently hosted a major inter-agency staff meeting to hear various perspectives.

Our charter, as you know, is very broad, so our early months are being devoted to gathering and sifting through numerous, wide-ranging suggestions for Council activity. Some activities, of course, are directly mandated by the Critical Materials Act, such as reviewing advanced materials research and development spending, and preparing a domestic inventory, with projections, of critical materials.

But even these projects can be handled in a variety of different ways, which require review and evaluation.

Starting up a new Council like this takes time, and we can be pleased with the progress we have made in establishing contacts, setting up the machinery of the Council, and collecting and reviewing various options for an agenda. I would expect that within two or three months the Council will have selected and focused on two or three specific areas of activity.

Unfortunately for the Council, my two colleagues have moved on to other jobs. We are currently working on finding replacements. I am pleased to announce this morning that Martha Hesse, Assistant Secretary for Management and Administration for the Department of Energy, has been appointed to the Council. I would expect that within a few months we will be back to full complement.

Until then, I hope everyone can bear with me.

I would like to close on a personal note by observing that I have found virtually everyone that I have spoken with to be open, cooperative and appreciative of the difficult task we face. It's a personal pleasure to be on the Council.

I do want to add that this is one agency that is requesting less money for '87 than we got in '86.

[The prepared statement of Thomas G. Moore follows:]

TESTIMONY OF THOMAS GALE MOORE
MEMBER, COUNCIL OF ECONOMIC ADVISERS
EXECUTIVE OFFICE OF THE PRESIDENT AND
MEMBER, NATIONAL CRITICAL MATERIALS COUNCIL
BEFORE THE APPROPRIATIONS SUBCOMMITTEE
TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT
U.S. HOUSE OF REPRESENTATIVES
APRIL 9, 1986

Thank you for the opportunity to appear before your committee to discuss the National Critical Materials Council. The Council, as you know, was created by the 1984 Critical Materials Act. We have been functioning since November of last year, and on January 14 held our first public meeting, which was well attended by representatives of the mining and minerals processing community, groups concerned with national security and minerals availability issues, and groups concerned with advanced materials research and development. A wide range of concerns was expressed.

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I would like to close on a personal note by observing that I have found virtually everybody I have spoken with to be open, cooperative, and appreciative of the difficult task we face. It is a personal pleasure to be on the Council.

Thank you, and I would be happy to accept questions.

Mr. **Roybal**. Thank you, Mr. Moore. That's the first thing that I noticed when I read your budgetary request, that you actually are requesting less money.

This Committee is of the opinion that the determination of the appropriate levels of strategic materials is both complicated and important. Now, what is the process by which you coordinate the many agencies and industries that are involved to make this determination?

Mr. **Moore**. We have been talking with various federal agencies and industry groups. We are going to collect the critical materials research budgets and plans of the various agencies, and bring them together. Then we can work with OMB to coordinate this activity in an improved way.

COUNCIL ORGANIZATION

Mr. **Roybal**. How about with regard to the status of the organization of the Council?

How is it now?

Mr. **Moore**. Well, we have full-time Executive Director, Brien Benson, who is here with me today, a full-time secretary, and a consultant to the Council, Perry Pendelton.

Mr. **Roybal**. There are three others?

Mr. **Moore**. Well, there are the two members at the moment, Martha Hesse and myself.

Mr. **Roybal**. Yes.

Mr. **Moore**. And there are two full time people working on the Council activity, the Executive Director and Secretary.

Mr. **Roybal**. I see.

Mr. **Moore**. And one part-time consultant.

REPORT ON STRATEGIC NEEDS

Mr. **Roybal**. Now, will you be issuing a report on what the strategic needs are in the very near future?

Mr. **Moore**. Well, we will be issuing a report in conformity to what is in the Act, which will address strategic materials.

Mr. **Roybal**. That is due pretty soon, is it not?

Mr. **Moore**. Well, actually it was due April 1, 1985.

Mr. **Roybal**. So, we are a little behind right now?

Mr. **Moore**. Well, we didn't get funded at all until last summer.

Mr. **Roybal**. The funding sometimes has tragic consequences.

Mr. **Moore**. That's right.

Mr. **Roybal**. Well, when do you think that report will be made?

Mr. **Moore**. We—Brien, what is the timing of that?

Mr. **Benson**. We are shooting for some time this summer.

Mr. **Roybal**. Well, we can say then that it will be made some time during this fiscal year; is that about correct?

Mr. **Moore**. Yes. We plan to have it this fiscal year.

Mr. **Roybal**. Thank you, Mr. Moore. Mr. Skeen.

Mr. **Skeen**. Thank you, Mr. Chairman. Mr. Moore, it's nice to have you here today. And I have a particular interest in this Critical Materials Council. And sometimes I think we get a little confused about strategic versus critical.

Do they always mean the same, or are they in the same categories? I was inclined not to think so. I think that we have certain groups of materials that can be both critical and strategic. And then those that are just critical.

Am I wrong in that assumption?

Mr. **Moore**. Well, I think you are right. I think that for strategic purposes, there are certain important minerals that we have to concentrate on. I mean, there are other critical materials which may not be strategic.

Mr. **Skeen**. I know that we have many critical materials in the manufacturing processes, for instance.

Mr. **Moore**. That's right.

Mr. **Skeen**. And I have a lot of hope. The criticism that we had in discussing this bill and the formation of funding of the Critical Materials Council is due to the fact that the Administration is not really sold on the idea in the beginning because they thought, well, we can draw from Interior, from other agencies, and so forth. We felt differently.

Those of us who come from western states that are resource producing states, or states where we tend to understand critical resource problems, particularly in the area of mineral materials, that you don't always have—you can't always reach into the great morass of all the departments and agencies and come up with one person that would know.

I think that this Materials Council is extremely important. And I'm glad to see you are getting the organization on the way. And you have not been funded except recently, and so I can understand why you are behind the curve on this thing. We are looking forward to the output and the results of this Council.

And we are glad you are getting started. And you have one vacancy now?

Mr. **Moore**. One vacancy.

Mr. **Skeen**. And I'm also very happy to see that you are very careful with the money. [Laughter.]

And I have no other questions, Mr. Chairman, other than to say that we are glad we got this thing launched and on its way. We, of course, hope that it is very productive. I think it will be very beneficial to the Administration and other agencies throughout the government to have this kind of a Council operating.

And I know that manufacturers and other interests throughout the United States have a very deep interest.

Mr. **Moore**. Thank you.

Mr. **Roybal**. Mr. Moore, thank you for your testimony. And we would request that when that report is ready that it will be made available to the Committee.

Mr. **Moore**. It certainly will.

Mr. **Roybal**. Thank you very much.

[The jusifications follow:]

I. GENERAL STATEMENT

Executive Office of the President
National Critical Materials Council

The National Critical Materials Council, created by the National Critical Materials Act of 1984, is a component of the Executive Office of the President. The Council's responsibilities include helping coordinate critical materials policies within the Federal government; bringing to the attention of the President, Congress, and the public, key critical material issues; and fostering ongoing consultation between the Federal government and the private sector on critical materials issues.

The Council will, among other activites, make reports, as appropriate, on minerals and materials issues, will help to develop a federal policy plan for advanced materials research and development, and ,in cooperation with OMB, will review materials research and development budgets of federal agencies.

II. APPROPRIATION LANGUAGE

Executive Office of the President
National Critical Materials Council

Salaries and Expenses

For necessary expenses of the National Critical Materials Council, including activities as authorized by Public Law 98-373, [$500,000] $250,000.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

National Critical Materials Council
Salaries and Expenses

Program and Financing (in thousands of dollars)

Identification code 11-0111-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	—	500	250
Financing:			
25.00 Unobligated balance lapsing	200	—	—
40.00 Budget authority (appropriation)	200	500	250
Relation of obligations to outlays:			
71.00 Obligations incurred, net	—	500	250
90.00 Outlays	—	500	250

Summary of Budget Authority and Outlays
(in thousands of dollars)

Enacted/requested:			
Budget authority	200	500	250
Outlays	—	450	—
Reduction pursuant to P.L. 99-177:			
Budget authority	—	-22	—
Outlays	—	-19	-43
Total:			
Budget authority	200	478	250
Outlays	—	431	-43

National Critical Materials Council

Program and Performance

The National Critical Materials Council assists in the coordination of materials policies and programs and works with the various agencies with mineral and materials policy and program responsibilities.

STANDARD FORM 300
July 1964, Bureau of the Budget
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300-101

National Critical Materials Council
Salaries and Expenses

Object Classification (in thousands of dollars)

Identification code 11-0111-0-1-802	1985 actual	1986 estimate	1987 estimate
Personnel compensation:			
11.8 Special personal services payments	0	125	170
11.9 Total personnel compensation	0	125	170
21.0 Travel and transportation of persons	0	25	20
23.1 Standard level user charge	0	12	18
23.3 Communications, utilities, and miscellaneous chgs.	0	16	20
24.0 Printing and reproduction	0	10	5
25.0 Other services	0	287	7
26.0 Supplies and materials	0	10	5
31.0 Equipment	0	15	5
99.9 Total obligations	0	500	250

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

National Critical Materials Council
Salaries and Expenses

Personnel Summary

Identification code 11-0111-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Total number of full-time permanent positions	0	0	0
Total compensable workyears:			
Full-time equivalent employment	0	0	0

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

National Critical Materials Council
Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code 11-0111-6-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	—	-22	—
Financing:			
40.00 Budget authority (appropriation)	—	-22	—
Relation of obligations to outlays:			
71.00 Obligations incurred, net	—	-22	—
90.00 Outlays	—	-19	-43

STANDARD FORM 306
July 1968, Bureau of the Budget
Circular No. A-11, Revised.
306-103

National Critical Materials Council
Salaries and Expenses

DETAIL OF PERMANENT POSITIONS

11-0111-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Ungraded	0	0	0
Total permanent positions	0	0	0
Unfilled positions, end of year	0	0	C
Total permanent employment, end of year	0	0	0

III. SUMMARY TABLES

Executive Office of the President
National Critical Materials Council

Summary of Budget Authority by Object Class
FY 1985-1987

BUDGET OVERVIEW
(in thousands of dollars)

	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY`86-`87
Personnel compensation:				
Full-time permanent	—	0	0	0
Other than full-time permanent	—	0	0	0
Special personal services payments	—	125	170	45
Total personnel compensation	—	125	170	45
Personnel benefits: Civilian	—	0	0	0
Total compensation & benefits	—	125	170	45
Travel & transportation of persons	—	25	20	-5
Standard level user charge	—	12	18	6
Comm., util., & misc. chgs.	—	16	20	4
Printing & reproduction	—	10	5	-5
Other services	—	287	7	-280
Supplies & materials	—	10	5	-5
Equipment	—	15	5	-10
Total program	—	500	250	-250
Lapse	200	—	—	—
Budget Authority	200	500	250	-250

National Critical Materials Council

Summary of Changes from FY 1986 to FY 1987
(in thousands of dollars)

	Increases	Decreases		
FY 1985 Budget Authority			$200	
FY 1986 BASE			$500	
Personnel compensation	$45	$0		
Personnel benefits	0	0		
Total comp. & bene.	45	0		
Travel & transportation of persons	0	5		
SLUC	6	0		
Comm., util., & misc. chgs.	4	0		
Printing & reproduction	0	5		
Other services	0	280		
Supplies & materials	0	5		
Equipment	0	10		
Total	$55	$305		
Net Increase/Decrease			-$ 250	
Total FY 1987 Request			$ 250	-50.00%

IV. EXPLANATION AND JUSTIFICATION OF CHANGES BY OBJECT CLASS FOR FY 1987

Executive Office of the President
National Critical Materials Council
(in thousands of dollars)

I. Increases to Maintain Current Services & Request Levels $0

FY'86	FY'87		Net Change
$125	$170	Personnel compensation and benefits These funds will provide for the Council's staff which is comprised of the Executive Director and positions equivalent to three staff-years. The $45,000 increase represents the annualized portion of these salary costs during FY 1987. This funding level will ensure full reimbursement to the parent agencies for all positions.	$ 45
$25	$20	Travel and transportation of persons The Council members and staff will be required to make periodic information gathering trips to mining operations and research centers throughout the United States, and to attend various conferences around the country in order to gather information, meet key individuals, and present the Council's perspective on materials issues. The proposed funding level will be sufficient to fulfill these assignments.	$ -5
$12	$18	Standard level user charge (SLUC) Due to the nature of its mission and close working relationship with the Department of Interior, Bureau of the Mines, the Council was located in Columbia Plaza in Washington, D.C. These funds will provide for the office space of the Executive Director and his immediate staff. The increase of $6,000 represents the annualized portion of these costs during FY 1987.	$ 6

$16	$20	Communications, utilities, and miscellaneous charges	$ 4
		We are requesting an additional $4,000 for the normal operating costs of the Council which includes telephone service, FTS, postage, and reproduction equipment rental charges.	
$10	$5	Printing and reproduction	$ -5
		This funding level will enable the Council to meet its mandatory reporting requirements to the President, Congress, and other affected entities.	
$287	$7	Other services	$ -280
		It is anticipated that the majority of the Council's initial start-up costs will occur during FY 1986. This includes support from other government agencies in the form of research, development of reporting requriements, and associated ADP systems design. The proposed FY 1987 funding level will provide for ADP equipment and systems maintanance contracts on a recurring basis.	
$10	$5	Supplies and materials	$ -5
		Required for the conduct of the Council's activities, these funds will provide for office and ADP supplies. This also includes the cost of subscriptions for various trade and technical publications.	
$15	$5	Equipment	$ -10
		As previously stated, we anticipate the majority of start-up costs to have occurred in FY 1986. The proposed equipment funding level will provide for any enhancement and/or replacements to our office automation equipment.	
$500	$250	Total all object classes	$ -250

THURSDAY, APRIL 10, 1986.

EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL OF ECONOMIC ADVISERS

WITNESS

BERYL W. SPRINKEL, CHAIRMAN

Mr. **COLEMAN**. The meeting of the Subcommittee will come to order. The Chair recognizes Dr. Beryl Sprinkel, chairman of the Council of Economic Advisers, Executive Office of the President.

Mr. **SPRINKEL**. Mr. Coleman, I am very pleased to appear before you today to testify on our appropriations request. The Council of Economic Advisers respectfully requests an appropriation of $2,346,000 for fiscal year 1987.

This request represents an increase of $45,000 over the current proposed level of $2,301,000. These funds will provide for 34 full-time positions and four others. This represents a restoration of the five positions the Council was cut in 1986. Based on a review of Council staffing, I feel it is necessary to have these positions restored, thus returning us to a level consistent with past Councils.

By reprogramming, we are able to add these positions without full funding, thus demonstrating fiscal restraint.

The appropriation we have requested for fiscal year 1987 provides what we believe is a realistic level of support for the Council. It reflects our commitment to producing the best possible work in the most effective manner.

I very much appreciate the support of this Subcommittee for the Council of Economic Advisers. We have worked hard in the last year with the support and commitment of the President to restore all of the functions of the Council. I am very pleased to be able to appear before you today to assure you that we are fully performing the role of the Council required by law.

I would be very happy to answer any of your questions, sir.

[Statement follows:]

GENERAL STATEMENT

Executive Office of the President
Council of Economic Advisers

The activities of the Council are set forth in the Employment Act of 1946. They include the following:

1. To assist and advise the President in the preparation of the Economic Report.

2. To gather and analyze timely information concerning current and prospective economic developments and report regularly to the President on the relationship of these developments to the achievement of maximum employment, production, and purchasing power as prescribed in the Act.

3. To appraise and report to the President on the extent to which the various programs and activities of the Federal Government contribute to the carrying out of the purposes of the Act.

4. To develop and recommend to the President national economic policies to foster and promote competitive enterprise, to avoid economic fluctuations, and to maintain maximum employment, production, and purchasing power.

5. To make such studies, reports, and recommendations on Federal economic policy and legislation as the President may request.

regularly with other government agencies and departments, as well as the Congress, and representatives of business, labor, consumers, agriculture, State and local governments, and the economics profession. In addition, the Members and staff of the Council are frequently called upon to serve on Cabinet Council working groups in a wide variety of fields.

Included in the Council's staff is a statistical unit which is responsible for the monthly publication Economic Indicators and the preparation of the statistical material in the annual Economic Report of the President, as well as for providing continuous assistance to the Council and professional staff.

The Council of Economic Advisers respectfully requests an appropriation of $2,346,000 for fiscal year 1987. This request represents an increase of $45,000 over the current level of $2,301,000. These funds will provide for 34 full-time positions and 4 other. This is 1 more full-time position than last year and will restore the Council to a level consistent with past Councils (see page 11).

The budget request before you is designed to provide funds to support the Council's statutory responsibilities while at the same time reflecting our commitment to perform these activities in the most efficient and cost-effective manner.

COUNCIL OF ECONOMIC ADVISERS

SALARIES AND EXPENSES

For necessary expenses of the Council in carrying out its functions under the Employment Act of 1946 (15 U.S.C 1021); [2,301,000] $2,346,000.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

COUNCIL OF ECONOMIC ADVISERS
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 11-1900-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	2,398	2,301	2,346
Financing:			
25.00 Unobligated balance lapsing	162	...	...
40.00 Budget authority (appropriation)	2,560	2,301	2,346
Relation of obligations to outlays:			
71.00 Obligations incurred, net	2,398	2,301	2,346
72.40 Obligated balance, start of year	292	479	547
74.40 Obligated balance, end of year .	-479	-547	-617
77.00 Adjustments in expired accounts.	-41	...	...
90.00 Outlays	2,170	2,232	2,276

Summary of Budget Authority and Outlays
(in thousands of dollars)

Enacted/requested:			
Budget authority	2,560	2,301	2,346
Outlays	2,170	2,232	2,276
Reduction pursuant to P.L. 99-177:			
Budget authority	...	-99	...
Outlays	...	-82	-17
Total:			
Budget authority	2,560	2,202	2,346
Outlays	2,170	2,150	2,259

COUNCIL OF ECONOMIC ADVISERS

Program and Performance

The Council of Economic Advisers analyzes the national economy and its various segments, advises the President on economic developments, recommends policies for economic growth and stability, appraises economic programs and policies of the Federal Government, and assists in preparation of the annual *Economic Report of the President* to the Congress.

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STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

COUNCIL OF ECONOMIC ADVISERS
SALARIES AND EXPENSES

Object Classification (in thousands of dollars)

Identification code 11-1900-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
Personnel compensation:			
111.101 Full-time permanent positions	1,143	1,273	1,445
111.301 Positions other than full-time permanent	21	26	64
111.501 Other personnel compensation.	35	55	55
111.801 Special personal service payments....................	248	175	...
111.901 Total personal compensation..	1,449	1,529	1,564
Personnel benefits:			
112.001 Civilian	134	199	209
121.001 Travel and transportation of persons	23	28	28
123.101 Standard level user charges..	185	185	185
123.201 Communications, utilities, and other rent	102	95	95
124.001 Printing and reproduction ...	84	75	75
125.001 Other services	205	90	90
126.001 Supplies and materials	59	30	30
131.001 Equipment	157	70	70
999.901 Total obligations	2,398	2,301	2,346
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STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

COUNCIL OF ECONOMIC ADVISERS
SALARIES AND EXPENSES

PERSONNEL SUMMARY

Identification code 11-1900-0-1-802	1985 actual	1986 estimate	1987 estimate
Total number of full-time permanent positions	28	33	34
Total compensable workyears:			
Full-time equivalent employment	29	33	38
Full-time equivalent of overtime and holiday hours	2	2	2
Average GS grade	10.85	10.70	10.62
Average GS salary	$32,502	$32,712	$31,534
Average salary of ungraded positions	$48,439	$46,863	$48,447
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STANDARD FORM 300
July 1964, Bureau of the Budget
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300-101

COUNCIL OF ECONOMIC ADVISERS
Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code 11-1900-6-1-802	19 85 actual	19 86 estimate	19 87 estimate
Program by activities:			
10.00 Total obligations	...	-99	...
Financing:			
40.00 Budget authority	...	-99	...
Relations of Obligations to Outlays:			
71.00 Obligations incurred, net......	...	-99	...
72.40 Obligated balance, start of year	...	...	...
74.40 Obligated balance, end of year.	...	-17	...
90.00 Outlays	...	-82	-17
(Memo cost: [illegible])	(Memo cost: 0)	(Memo cost: 0)	(Memo cost: 4.8)

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STANDARD FORM 306
July 1968, Bureau of the Budget
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306-108

COUNCIL OF ECONOMIC ADVISERS
SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS

	19 85 actual	19 86 estimate	19 87 estimate
Exeuctive level II	1	1	1
Executive level IV	2	2	2
Subtotal	3	3	3
GS-14	1	1	1
GS-13	1	1	1
GS-12	1	1	1
GS-11	5	5	5
GS-10	3	3	3
GS-9	1	1	1
GS-5	1	1	1
Subtotal	13	13	13
Ungraded	18	17	18
Total permanent positions	34	33	34
Unfilled positions, end of year	6	...	...
Total permanent employment, end of year	28	33	34
(Mono cast: 16.3)	(Mono cast: 4.9)	(Mono cast: 4.9)	(Mono cast: 4)

GPO 1970-041-030/3037

HISTORY OF TOTAL POSITIONS COUNCIL OF ECONOMIC ADVISERS

Year	Total Positions (including part-time, temporary, other)
1947	43
1950	36
1953	34
1957	35
1960	32
1965	44
1968	48
1971	60
1973	57
1975	60
1977	56
1979	52
1981	46
1982	39
1983	38
1984	38
1985	38
1986	33
1987	38

Executive Office of the President
Council of Economic Advisers

Summary of Budget Authority by Object Class
FY 1985 - FY 1987

BUDGET OVERVIEW
(Dollars in 000's)

	Actual FY 1985	Estimated FY 1986	Estimated FY 1987	Net Change FY '86-'87
Personnel Compensation:				
Full-time Permanent	1,145	1,273	1,445	172
Other than Full-time Perm.	21	26	64	38
Other Personnel Comp.	35	55	55	0
Special Personal Svc. Pay.	248	175	0	(175)
Total Personnel Comp.	1,449	1,529	1,564	35
Personnel Benefits:Civilian	134	199	209	10
Total Comp. & Benefits	1,583	1,728	1,773	45
Travel & Trans. of Persons	23	28	28	0
Standard Level User Charge	185	185	185	0
Comm., Util., & Misc. Chg.	102	95	95	0
Printing & Reproduction	84	75	75	0
Other Services	205	90	90	0
Supplies & Materials	59	30	30	0
Equipment	157	70	70	0
Total Direct Program	2,398	2,301	2,346	45
Lapse	162	0	0	
Budget Authority	2,560	2,301	2,346	45

Executive Office of the President
Council of Economic Advisers

Summary of Changes from FY 1986 to FY 1987
By Object Class (in thousands of dollars)

	Increases	Decreases	
FY 1985 Budget Authority			$2,560
FY 1987 Base			$2,301
Personnel Compensation	$35	$0	
Personnel Benefits	10	0	
Total Comp. & Benefits	45	0	
Travel/Trans. of Persons	0	0	
Trans. of Things	0	0	
SLUC	0	0	
Rent, Comm., & Utilities	0	0	
Printing & Reproduction	0	0	
Other Services	0	0	
Supplies & Materials	0	0	
Equipment	0	0	
Total	$45	$0	
Net Increase			$ 45
Total FY 1987 Request			$2,346 +1.96%

EXPLANATION AND JUSTIFICATION OF CHANGES BY OBJECT CLASS FOR FY 1987

Executive Office of the President
Council of Economic Advisers
(Dollars in 000's)

Increases to Maintain Current Services and Request Levels $45

FY '86	FY '87		NET CHANGE
$1,728	$1,773	Personnel Compensation and Benefits These funds will provide for 34 Full-time Permanent positions. This is an increase of 1 Full-time Permanent and 4 Other positions.	+45
28	28	Travel and Transportation of Persons The existing resources are adequate to cover travel expenses of Council Members, staff, and consultants.	0
185	185	Standard Level User Charge (SLUC) These funds will be used for rental of office space in the Old Executive Office Building. The rental rate remains unchanged.	0
95	95	Communications, Utilities, and Other Rent No additional funds are requested for this object class.	0
75	75	Printing and Reproduction The current resources are adequate to cover the cost of printing the Economic Report of the President. A portion of these funds will also be used for other printing and reproduction expenses.	0
90	90	Other Services No additional funds are requested for this object class.	0
30	30	Supplies and Materials No additional funds are requested for this object class.	0
70	70	Equipment No additional funds are requested for this object class.	0
2,301	2,346	Total of all Ojbect Classes	+45

Mr. **Coleman**. So we have it on the record, the Council is asking for 34 full-time equivalent positions and four additional positions, as I understand it from your testimony?

Mr. **Sprinkel**. Yes, sir, that is correct.

Mr. **Coleman**. What are those four additional positions and how are they funded?

Mr. **Sprinkel**. Well, we are trying to reprogram some of our funds. Some of these will be people that are in for some portion of the year. Most of them would be support staff that augment the activities of the professional economists. We have planned a level somewhat below even the size of the Council in 1947, which is the first year we have data on its size.

We are planning 12 senior economists, six junior economists, and three members. So 21 professional economists will make up the significant portion of that total number.

Mr. **Coleman**. So that I understand it, we are talking not about apples and oranges but rather one base figure. As I understand it, there is an increase of $45,000 over FY 1986?

Mr. **Sprinkel**. Yes, sir.

Mr. **Coleman**. That is an appropriated increase of $140,000 above the 1986 appropriation after Gramm-Rudman?

Mr. **Sprinkel**. We had a cut this fiscal year, I believe, of 99,000 below the initial appropriation. And——

Mr. **Coleman**. That was as a result of the March Gramm-Rudman cut?

Mr. **Sprinkel**. Yes, sir, that is correct. And it is our belief that to advise the President on economic policies properly, which is my major responsibility, the council needs to get back to the size that existed prior to the cut back of five positions for this current fiscal year. That cut back occurred when the Council of Economic Advisers was without a chairman and the role of the council had been significantly reduced.

Mr. **Coleman**. Dr. Sprinkel, I think the thing for me to say is there is a perception out there about who are the leaders in taking the cuts. And I guess I should get people here in Washington to come to town hall meetings around the country, at least around my district, where they are saying "are you going to cut back on the Legislation Branch appropriation," "are you going to get a pay raise?" "Are you going to do all of those things?"

And it seems to me the Council of Economic Advisers in terms of its minuscule appropriation and percentage is not really relevant as to what the perception is. What I think members of Congress should be able to do on your behalf is describe to people what the justification is that you are not only receiving an increase but even a reimbursement for the Gramm-Rudman cut.

That is what we have to do regardless of the size and numbers we are talking about.

Mr. **Sprinkel**. Yes, sir. Well, the major thing, of course, is to restore the positions to the number we had before we sustained a very significant cut. Even with the restoration, we are well below the average number of positions that the council has been allotted since 1947. And we plan to keep it that way.

I think the major justification for any expenditure for the Council of Economic Advisers is to fund the staff to provide the advice that the law requires us to provide to the President of the United States. That is what I consider to be my major role.

Now, we do that in many ways. I do it with personal briefings of the President. I also attend all the Cabinet meetings and participate in all the important policy discussions. As I am sure you know as it works typically, there are three important Councils that work on various issues. These include the National Security Council, in which I do not fully participate except when there is an important economic issue; the Economic Policy Council, which considers most of the broad macro issues and some of the micro issues including trade; and the Domestic Policy Council, which considers all of the other important issues.

The main point that I want to make is that my staff typically participates in almost all of the working groups that are established under the jurisdiction of the Economic Policy Council and the Domestic Policy Council, laying out the problem, working up options, recommending the alternatives. The cabinet-level people then take the material prepared by the working groups and debate it before the appropriate Council.

If the Councils' commendation is unanimous, we prepare a memo to the President indicating it is unaminous. But nonetheless we go before him and discuss the issue. If it is not unanimous, which is typically the case, we go before the President and make the arguments one more time. Then, of course, he decides.

So my concern throughout these activities is that we provide the highest quality economic advice that we can possibly give the President. Because they are all tough decisions. If they were easy, they would not be coming up to the President.

Mr. **Coleman**. Like Gramm-Rudman.

Mr. **Sprinkel**. I am very supportive of Gramm-Rudman.

Mr. **Coleman**. And your advice to the President was it was okay to tighten belts, it would be good for the nation. I want to tell you I am one of those that agree.

The problem is now I have to go back and say we must cut but this is an extremely important agency that directly influences national policy, through interaction with the President of the United States, the highest office in the world, and we cannot cut its budget. budget.

That is essentially what we are saying. I have to tell you that I do not think that we are being consistent. And I just think that causes all of us problems. I am not talking just about your agency. I can talk about my ability to answer mail in my own office when people do not get their letter responded to in what they consider to be a reasonable amount of time. I have to say that is the reality.

Many of us are faced with that. But we are doing it. It is not that I relate my jobs to yourself in terms of importance, I do not. I only suggest it has been, explained to us, that Gramm-Rudman is good for the economy, good for the country, we can all do this in terms of spending. And then the Council of Economic Advisers say but not us.

It sounds awfully familiar from what I hear back in the district when I am talking to people about the Job Corps, and military or federal retirement.

Mr. SPRINKEL. I understand that. We are attempting to restore the number of positions that have historically been allotted to the Council; and the number of positions we are requesting is still on the low side of what has been average throughout the Council's history. I am sure we are as active as any recent Council in terms of the extent to which we are involved in important policy decisions. Now, in restoring the Council during this past year, we have been short some members and we have been short some staff. However, we are planning on getting up to the proposed levels of last year.

We were able to increase the availability of small computers for our staff and consequently have been able to reduce our expenditure substantially on purchases of time sharing from outside computers from about $300,000 a year down to about $45,000 this year. I know we are now getting more output per person as a result of having better computer facilities. Most of our budget, as you know, is people.

Mr. COLEMAN. That is one of the places everybody looks to when they want to start cutting. We see it in Customs and other areas this for which Committee has responsibility. It is one of the things I wish we did not have to do, but given the effects of Gramm-Rudman we have to pick and choose and make those decisions. And I hope that is what this Committee, the Congress, and President will do.

And if in fact in terms of your budget request we cannot justify the Gramm-Rudman cut, or the restoration of it, and an increase, then I think that is our job. That is what Gramm-Rudman is supposed to be about, about avoiding sequestration.

Have you made any recommendations regarding the effect of following oil prices in the Southwestern United States economy?

OIL PRICES

Mr. SPRINKEL. I participated from early on in the debate in the Administration, we updated our views, about what we consider to be the proper response to the oil market. We believe that we should rely as much as possible on market determination of oil prices. As you recall, one of the first acts that President Reagan took early in his first administration was to deregulate the price of oil. Many people believed that prices would explode. Of course, they went down. And we are trying to complete the deregulation of gas, which we have had, I believe, since the fifties.

We fully recognize that the very precipitous drop in oil prices that was unanticipated by us or by anyone else I know—although perhaps there were people that knew it—is creating some very serious problems in the Southwestern part of this country, in particular parts of the West, and even having some bad effect in my home state, down in South Illinois.

As the President has indicated, we are hopeful that these prices will stabilize. It makes it very difficult for producers to decide the level of exploration and the level of production, when they cannot possibly know what the price is going to be.

Therefore, our view remains the same. We plan to take full advantage for the American people of the result of the decline in oil prices, which reduces the cost of production in many industries. It reduces costs to the American consumer, which means they will have funds to spend on other goods and services which they did not previously have available. And clearly, on balance for the economy as a whole, it is a strong plus. But that does not mean it is a strong plus for everyone. The producers in the Southwest were the ones who were the most hurt, just as they were the ones that benefitted the most from the substantial price increase.

Mr. COLEMAN. I would hope the White House has the information that it is not just the producers in that region, also there are foreign countries greatly hurt. There will wind up being banks across the country hurt. I think there is a view, at least in my part of the country, that we ought to be concerned about prices at a level where we will once again become dependent on foreign oil.

I am sure that the Council of Economic Advisers is taking all of those matters into consideration.

Mr. SPRINKEL. Yes, sir, we are.

IMMIGRATION

Mr. COLEMAN. There was a draft report issued on January 22, 1986 where the Council stated that proposals such as those contained in the Administration-backed immigration reform legislation which punishes employers of illegal aliens would have an adverse impact on the Nation's economy.

Subsequent to the release of the draft report, the Council omitted that particular section from the final report as I understand it. What is the real opinion of the Council on this issue?

Mr. SPRINKEL. Well, let me first tell you what happened. Early on last fall, I spent a great deal of time thinking about and talking with my staff as to what chapters we should prepare. We finally narrowed it down to the seven which we did. But before we made a final decision, I visited each of the Cabinet members that were directly involved with whatever the issue might be.

We discussed with the Cabinet members and laid out in as much detail as we could what we planned to do with each chapter. And we assured them—and we did follow through—that my staff would remain constantly in touch with their staff. There would be no surprises, and they would have opportunties to make suggestions and changes. And this process proceeded as planned.

Approximately ten days before the article appeared in the New York Times—in fact, I think it was precisely ten days—I made a decision after much discussion and thinking about the chapter we were doing on immigration. I decided that we should not take a piece of the proposed immigration bill (i.e., employer sanctions) and discuss it in the chapter for two reasons. In the first place, I decided it would not be fair, that we should talk about the total bill if we were going to talk about it at all. And we chose not to talk about it at all.

And second I had also assured Attorney General Meese that I would not discuss enforcement issues. This was bordering on an enforcement issue, not a basic economic issue. So I removed the employer sanctions section 10 days before the article appeared.

There had been several drafts from the beginning; we went through several drafts. The early drafts did have a section dealing with enforcement; the latter drafts did not. But the article in the Times referred to the part that was in an early draft that had been removed for the reasons I discussed. So we never released anything on enforcement.

Mr. COLEMAN. Do you have an opinion about whether or not the enforced economic sanctions would have a benefit?

Mr. **Sprinkel**. Well, let me tell you how we happened to come to do that chapter. The objective we had in that report was our belief that we should look at the economic effects of immigration. Now, that is pretty obvious except that in reviewing prior activities by the Administration—I am not sure about the Congress—the immigration issue had been considered strictly from an enforcement point of view. I could find no evidence that the economic effects of immigration were ever discovered. I checked carefully.

Mr. **Coleman**. I think you are right by the way.

Mr. **Sprinkel**. There are good reasons why economics should not be the ruling factor, but at least it should be considered, along with all of the other problems. So after going through the process and pointing out that there was a vast literature on this subject and that we had a lot of evidence—even though it was a little bit of a sticky wicket—we decided that at least we should present the economics. And the economics is positive.

Now, it is not positive for every community. There are certain communities close to the border that incur more costs than benefits, and we pointed that out. But the overall impact on the economy has almost certainly been strongly positive.

That does not mean we should have open borders; that does not mean that a particular bill is good or bad. It means that we should consider, along with other factors, the economic impact of immigration. That is what we tried to do in that chapter. And we did not take any view in the chapter on employer sanctions. I never signed off on the early version.

Mr. **Coleman**. In closing would ask that you do this Committee a favor.

There are many here because of the fact that your agency is certainly one of the most respected in government, and we think that any information you are able to provide to us would be most appreciated.

Thank you very much.

Let me recognize the ranking member of this Committee, Joe Skeen.

Mr. **Skeen**. Thank you, Mr. Chairman.

I know that this reflects back on the questions my colleague from Texas asked earlier. I know that you have asked for an increase in the budget, and I respect that. And I think that considering the work that you have to do, and considering its complexities those are legitimate requests.

Everybody has their perspective of how we are going to deal with Gramm-Rudman. I do support it. And I think we should have exercised our responsibilities a long time ago. But this is the mechanism to do just that. Good or bad, it is here and we are going to have to deal with it.

Also dealing with this question of the oil situation, I hope the Administration understands the national security aspects of it.

Mr. **Sprinkel**. The President indicated so last night.

OIL PRODUCTION

Mr. **Skeen**. I think he did.

We have 73 percent of our production that is so-called stripper production in West Texas and New Mexico. A skipper well is one which produces ten barrels or less a day. If we cap those or close them up, which we are likely to do, I do not think we will ever gain them again. So that puts our domestic production in jeopardy or self sufficiency.

I want to welcome you here today.

I have no further questions.

Mr. COLEMAN. Thank you, Mr. Skeen.

Mr. Hoyer.

Mr. HOYER. I do not have any questions. I would make the observation that our acting Chairman observed that your Council has great respect, and I agree with that. Martin Feldstein appeared on a number of occasions. He agreed with that as far as we were concerned. I am not sure he also got the same vibrations from the White House as I recall.

Mr. SPRINKEL. I was not there at the time.

Mr. HOYER. I did not ask you to comment on it. Notwithstanding that you were not there, you read the same papers I did, Doctor. I remember Dr. Feldstein used to appear before us, and I asked him questions about what he thought ought to be done. He and Mr. Stockman seemed to be in general agreement on some of the things that ought to be done. They are both gone of course.

Has the Council made any recommendations with respect to revenues?

REVENUES

Mr. SPRINKEL. Yes. The major recommendation is to support the President's view, which I think is dead right, to balance the budget: no tax increases. This is the view I had long before I joined the Administration. So it is not a new thing for me.

The reason that the President holds that view and that I hold that view is that two things would happen if we went for a tax increase in order to balance the budget, neither of which I consider desirable. One, it would reduce restraint on spending. It is much easier to raise taxes than it is to slow down the rate of spending. Secondly, any kind of tax increase—some are worse than others—tends to reduce incentives to save, to work, and to invest. We would end up, in my opinion, with a larger government and weaker private sector.

Mr. HOYER. What are the savings levels vis-a-vis 1981 in 1986 or 1985?

Mr. SPRINKEL. Total gross savings in the United States is running close to 17 percent, including personal and corporate. There has not been a significant improvement in personal savings.

Mr. HOYER. Has it not gone down, Doctor?

Mr. SPRINKEL. In some areas it has. It dropped to 3 or 4 percent of disposal income at one point. But it has probably been running—I would have to check the numbers—but it is certainly no higher and maybe lower than it was in the latter seventies.

KEYNESIAN ECONOMICS

Mr. HOYER. Doctor, let me ask you about increased revenues, the taxes and adverse consequences that you project. Would it be fair to say that in effect we are following a very Keynesian, and have been for the last five years, policy hyping the economy very, very substantially?

Mr. SPRINKEL. I think we have been doing the opposite. I have been involved in the Keynesian-monetary debate for many years.

Mr. HOYER. You are much more knowledgeable than I.

Mr. **Skeen**. Do not back out now.

Mr. **Hoyer**. It has never stopped me in the past. Why stop now.

Mr. **Sprinkel**. I do not want to dump on Mr. Keynes. I think some of his earlier books were pathbreaking books. The book from 1924 reads very well today. The problem occurred in '36 when the world was in a massive depression and people were struggling for answers.

I remember that Depression all too well, because I was on the farm and my father lost everything he owned. That probably was what got me interested in economics; I asked myself, why did all those horrible things happen? That book happened to present some views that he believed would bring about change, that would save the free enterprise system.

One of the great tragedies, from my point of view, is that unfortunately Mr. Keynes died, I believe in 1946, and some of his followers pushed his arguments much further than I believe he would have done. There was written evidence of that, just before his death, because inflation became the problem in the post-war years. And many of the so-called Keynesian policies that were proposed aided and abetted that inflation.

President Reagan from the very beginning has been insistent on trying to get the inflation rate down. When we came into office it was 12, 13 percent, maybe 14 for awhile. We have been running under 4 percent now, this will be the fifth year. The President still wants to get down to stable prices so we can fully trust our currency.

And I find it very difficult to see how you could argue that we have been pursuing Keynesian policies. I think we have been pursuing sensible macro policies that try to orient the economy in market directions.

I do not want to say all that is our idea. Some of that started in President Carter's Administration and, prior to that, President Ford's Administration with efforts to deregulate. We have tried to carry deregulation further.

We have also tried to restrain the rise in Government spending, although not very successfully. We have to be honest and say that Federal Government spending as a percentage of GNP has risen during our Administration to 24 percent in fiscal 1985. Even Gramm-Rudman proposals in my opinion do not suggest a Draconian cut in spending running out to 1991. Spending most of the time goes up a little bit.

But if we can continue growth, which is is our major objective, along with low inflation, the size of the Government as a percentage of the economy could come down somewhat. There will not be significant cuts in Government spending under even Gramm-Rudman.

One of the arguments that I was interested in related to arguments made by some of my Keynesian friends that these cuts are going to cause a recession. That sounded more than vaguely familiar because I have heard those arguments before. What I attempted to do was to evaluate the seriousness of that threat.

It is always a possibility. It turns out that in the post-war years, not including the first two or three years immediately following World War II, because there were massive cuts in Government spending, but excluding that period, there have been six years when the actual cuts in Government spending were as much as a half a percent of GNP, either slightly more or slightly less. That is what it amounts to this time.

When we looked at the historical data, we saw that there was no correlation at all between those years when the modest cuts occurred and those years when the economy went into a recession. This time, in my view, the cuts will be coming at a time when the economy is doing very well, partly by design of the President's programs, and partly by some luck, in terms of oil prices coming down substantially and of course interest rates following that decline.

So I do not believe in pursuing what I would call Keynesian policies. But there are parts of what Lord Keynes said that I have long agreed with. So it depends on how you interpret Keynesian economics.

DEFICIT SPENDING

Mr. HOYER. Gee, I am glad I asked that question. The part I am referring to is massive deficit spending in a time when the economy is moving as opposed to when it is oppressed. To that extent we have been following what had been previously by the President and others prior to his Administration severely criticized policy.

Mr. SPRINKEL. We are not proud of those big deficits. And we are very supportive of efforts to get them down. As you know, the prior estimates of the deficit as recently as about a year ago was that they would run "200 billion as far as the eye could see", to use one phrase. It now appears that if we can hold the current services budget and if we can hold to moderate growth—both of them are critical provisos—that the deficit will gradually come down to about half that size or a little over $100 billion. But our objective is to move it on down to zero.

And the reason——

Mr. HOYER. Which I think is a worthwhile objective. I think that is where we ought to be. Maryland, the state from which I come, is always at zero. Maryland is a state run by liberal Democrats for the last umpteen years and liberal Republicans. You remember Spiro Agnew. Has always had a balanced budget. And it is very stable in terms of bond rate.

So I am for that objective. Very frankly, I do not think the President is for Gramm-Rudman. I think if we all said right now Gramm-Rudman goes into effect, period, the President would be absolutely apoplectic because he would think that would be a sellout of the national security. He is for Gramm-Rudman targets of 144 billion but certainly not for the Gramm-Rudman effect if the Congress went home. And you know that and I know that. He would be apoplectic if Gramm-Rudman went into effect.

Mr. SPRINKEL. I am sure, Congressman, you are well aware of the fact that the budget the President submitted to the Congress some months ago met the Gramm-Rudman target. It did so without pulling out the income support from the poor; it did so without affecting Social Security, because there is no political consensus on both sides of the aisle——

Mr. HOYER. I wonder why.

Mr. SPRINKEL [continuing]. That that should happen. It also did so without gutting defense spending and without raising taxes. The cuts are small but they are important.

And when you tell me that the President is not in favor of Gramm-Rudman, you know, I have to respect you, but I would respectfully say that I heard him say as recently as yesterday that he is strongly in favor of Gramm-Rudman.

Mr. HOYER. Well, I would suggest that we all adjourn and have Gramm-Rudman go into effect and see what the President's response is. He would be apoplectic and you and I both know that.

Thank you, Mr. Chairman.

Thank you, Doctor.

Mr. COLEMAN. The Gentleman from Virginia.

JOBS

Mr. WOLF. Welcome. Mr. Sprinkel. I am going to strongly support your increase because you have gotten inflation down from 13.8 to 3 percent. And I heard your speech yesterday and I have used those employment figures—9.8 million new jobs in this country since 1981.

Mr. SPRINKEL. Slightly over 9.7. Since you heard that speech, there was a slight decline in the numbers last month.

Mr. WOLF. How many jobs have been created in Europe overall?

Mr. SPRINKEL. There have been none net in the last decade, which is a sorry thing to report, partly because it impacts us adversely.

One of the important reasons why the dollar was so strong and our ability to export was increasingly hampered was the fact that growth abroad was substantially less than growth in the United States. They were not fully utilizing their potential by a long shot. If we look at the levels of unemployment in most European countries, they are at or near their post-war highs.

Now, very recently their employment situation is beginning to improve. We have been discussing with our trading partners and defense partners what we believe was causing their inability to create jobs and pull their unemployment rate down. It had to do with what the Europeans call "structural rigidities," I guess I would call it over regulation or over legalizing, creating inflexibilities in the labor market.

The Germans and the British and various others are now moving on those rigidities. In the past few months in some of those countries, they have been creating a few jobs.

I returned a few weeks ago from a meeting in Western Europe where I am Chairman of the Economic Policy Committee of the OECD. They are quite optimistic that their growth rates are going to be going up this year. And that will help us on our trade account.

But to get to your basic point, their ability to create jobs has been severely retarded. I think it is gradually improving. And we are going to continue to urge that they continue to do so at the OECD Ministerial meeting next week. I am sure Secretary Baker will undoubtedly make some of those points during the Interim and Development Committee meetings coming up here in Washington.

Mr. WOLF. Do we have a vote?

Mr. COLEMAN. Yes.

INFLATION RATE

Mr. WOLF. One quick question. Last week in the New York Times I saw an article that said inflation in 1986 could be as low as 1.6. Is that possible?

Mr. **Sprinkel.** It is possible. We have two contrary forces working. One will be stronger than the other this year. The decline in the dollar tends to raise the cost of internationally traded goods, especially imported goods. And that would tend to push the inflation rate up a little bit. But a very substantial decline in oil prices, 50, 60 percent, in the short run works clearly in the opposite direction. Both of those influences decay over time, but they will have effects this year.

Mr. **Wolf.** What do you think it will be for 1986?

Mr. **Sprinkel.** I think the inflation rate will be below our projection which was made before the sharp decline in oil prices. We have not changed that officially, and we will not for a few months. I think we said 3.8 percent for inflation, and I would not be at all surprised to see it come in below 3 percent. But we have not yet done that forecast in detail.

Mr. **Wolf.** Thank you. I want to commend you and appreciate the work you are doing.

Mr. **Roybal.** Dr. Sprinkel, I'd like to thank you for your testimony. I do not have any questions. I understand that all the questions have already been asked and that you have answered every one of them.

I would like to thank you. We have a rollcall on the floor so the Committee will be in recess for ten minutes. At that time we will hear the other witnesses. I wish to thank you for your testimony.

Mr. **Sprinkel.** Thank you, Mr. Chairman.

TUESDAY, APRIL 8, 1986.

NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION

WITNESSES

MANUS J. FISH, JR., REGIONAL DIRECTOR, NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION

JAMES I. McDANIEL, ASSOCIATE REGIONAL DIRECTOR, WHITE HOUSE LIAISON, NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION

ALLYSON ROWELL, BUDGET ANALYST, DIVISION OF PROGRAMMING AND BUDGET, NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION

INTRODUCTION OF ASSOCIATES

Mr. HOYER [presiding]. We want to welcome to the committee Mr. Fish with friends. Mr. Fish, if you want to proceed to introduce those with you and proceed in that manner which you so desire.

Mr. FISH. I would like to introduce Mr. Jim McDaniel, our Associate Regional Director in the National Park Service for White House Liaison, and Mrs. Allyson Rowell, the Budget Analyst.

FY 1987 REQUEST SUMMARY

Mr. Chairman, I appreciate the opportunity to appear before you to present, for your consideration, the fund requirements for the maintenance and operation of the executive residence at the White House for Fiscal 1987.

The appropriation for this account for Fiscal 1986 is $4,577,000. The Fiscal 1987 appropriation request is $4,942,000. Non-recurring funds are being sought to renew deteriorating floors in the red, green and blue rooms ($125,000).

The green room, the blue room, and the red room will be refitted with new hardwood flooring. The wooden floors in the executive residence first floor state rooms were installed during the 1948–1952 renovation.

Since 1952, the floors have been walked on by an estimated 35 million visitors, tourists and guests. Repairs to the floors have been made by sanding the surface and then refinishing them. This process has been performed three times on the red and green room floors and four times on the blue room floor.

The surface of the floors has been worn to the point that the nails and the tongue-and-grove joints which hold the floor together are exposed and only emergency patches can be made to the floor.

The repairs are easily noticed and detract from the appearance of these historic rooms. The east room flooring, also installed during the 1948–1952 renovation, was replaced in 1977 for the same reasons.

Also requested are personnel costs, including the restoration of the five percent salary reduction absorbed in this budget in Fiscal Year 1986 and not subsequently restored ($180,000).

In addition to providing for the increased cost of supplies, materials, and other services, an amount is also requested to perform equipment, utilities and facilities maintenance that was deferred in Fiscal Year 1986 and to restock filters, steam valves and other supplies used, but not replaced in Fiscal Year 1986 ($60,000). No changes in FTE's are proposed in this request.

REX SCOUTEN'S RETIREMENT

This concludes our budget request, Mr. Chairman, but at this time I would like to bring to your attention the fact that Mr. Rex Scouten, the Chief Usher for the White House for the last 16 years, retired this last January.

From the very beginnings of his Federal Service career, Rex Scouten's paramount concern has always been the comfort and safety of the nation's chief executive and his family.

President Ronald Reagan cited his accomplishments by presenting him with the President's award for distinguished Federal civilian service in an oval office ceremony on February 7, 1986.

We in the Federal Service join the President in commending Rex Scouten's life of public service and salute him as a wise guardian and steward of one of this nation's foremost historic treasures.

I would appreciate the opportunity to submit a full statement of Mr. Scouten's accomplishments for the record.

Mr. HOYER. We would be pleased to receive that, and without objection we will receive that.

Thank you.

Mr. FISH. Mr. Gary Walters, who served as Assistant Chief Usher, has been appointed by the President to succeed Mr. Scouten.

Mr. Chairman, I shall be pleased to answer any questions you and other members of the committee may have about the operation of the executive residence and the budget request before you.

[The statement of Manus J. Fish follows:]

STATEMENT OF MANUS J. FISH, JR., REGIONAL DIRECTOR, NATIONAL PARK SERVICE, BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS, SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT, ON THE 1987 BUDGET FOR THE EXECUTIVE RESIDENCE AT THE WHITE HOUSE.

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TO PRESENT, FOR YOUR CONSIDERATION, THE FUND REQUIREMENTS FOR THE MAINTENANCE AND OPERATION OF THE EXECUTIVE RESIDENCE AT THE WHITE HOUSE FOR FISCAL 1987.

THE APPROPRIATION FOR THIS ACCOUNT FOR FISCAL 1986 IS $4,577,000. THE FISCAL 1987 APPROPRIATION REQUEST IS $4,942,000. NON-RECURRING FUNDS ARE BEING SOUGHT TO RENEW DETERIORATING FLOORS IN THE RED, GREEN AND BLUE ROOMS ($125,000). THE GREEN ROOM, THE BLUE ROOM, AND THE RED ROOM WILL BE REFITTED WITH NEW HARDWOOD FLOORING. THE WOODEN FLOORS IN THE EXECUTIVE RESIDENCE FIRST FLOOR STATE ROOMS WERE INSTALLED DURING THE 1948-1952 RENOVATION.

SINCE 1952, THE FLOORS HAVE BEEN WALKED ON BY AN ESTIMATED 35 MILLION VISITORS, TOURISTS AND GUESTS. REPAIRS TO THE FLOORS HAVE BEEN MADE BY SANDING THE SURFACE AND THEN REFINISHING THEM; THIS PROCESS HAS BEEN PERFORMED THREE TIMES ON THE RED AND GREEN ROOM FLOORS AND FOUR TIMES ON THE BLUE ROOM FLOOR. THE SURFACE OF THE FLOORS HAS BEEN WORN TO THE POINT THAT THE NAILS AND THE TONGUE-AND-GROVE JOINTS WHICH HOLD THE FLOOR TOGETHER ARE EXPOSED AND ONLY EMERGENCY PATCHES CAN BE MADE TO THE FLOOR. THE REPAIRS ARE EASILY NOTICED AND DETRACT FROM THE APPEARANCE OF THESE HISTORIC ROOMS. THE EAST ROOM FLOORING, ALSO INSTALLED DURING THE 1948-1952 RENOVATION, WAS REPLACED IN 1977 FOR THE SAME REASONS.

ALSO REQUESTED ARE PERSONNEL COSTS INCLUDING THE RESTORATION OF THE FIVE PERCENT SALARY REDUCTION ABSORBED IN THIS BUDGET IN FY 1986 AND NOT SUBSEQUENTLY RESTORED ($180,000).

IN ADDITION TO PROVIDING FOR THE INCREASED COST OF SUPPLIES, MATERIALS, AND OTHER SERVICES, AN AMOUNT IS ALSO REQUESTED TO PERFORM EQUIPMENT, UTILITIES AND

FACILITIES MAINTENANCE THAT WAS DEFERRED IN FY 1986 AND TO RESTOCK FILTERS, STEAM VALVES AND OTHER SUPPLIES USED, BUT NOT REPLACED IN FY 1986 ($60,000). NO CHANGES IN FTE'S ARE PROPOSED IN THIS REQUEST.

THIS CONCLUDES OUR BUDGET REQUEST MR. CHAIRMAN, BUT AT THIS TIME I WOULD LIKE TO BRING TO YOUR ATTENTION THE FACT THAT MR. REX SCOUTEN, CHIEF USHER FOR THE WHITE HOUSE FOR THE LAST 16 YEARS, RETIRED THIS LAST JANUARY. FROM THE VERY BEGINNINGS OF HIS FEDERAL SERVICE CAREER, REX SCOUTEN'S PARAMOUNT CONCERN HAS ALWAYS BEEN THE COMFORT AND SAFETY OF THE NATION'S CHIEF EXECUTIVE AND HIS FAMILY. PRESIDENT RONALD REAGAN CITED HIS ACCOMPLISHMENTS BY PRESENTING HIM WITH THE PRESIDENT'S AWARD FOR DISTINGUISHED FEDERAL CIVILIAN SERVICE IN AN OVAL OFFICE CEREMONY ON FEBRUARY 7, 1986. WE IN THE FEDERAL SERVICE JOIN THE PRESIDENT IN COMMENDING REX SCOUTEN'S LIFE OF PUBLIC SERVICE AND SALUTE HIM AS A WISE GUARDIAN AND STEWARD OF ONE OF THIS NATION'S FOREMOST HISTORIC TREASURES. I WOULD APPRECIATE THE OPPORTUNITY TO SUBMIT A FULL STATEMENT OF MR. SCOUTEN'S ACCOMPLISHMENTS FOR THE RECORD. (1) MR. GARY WALTERS, WHO SERVED AS ASSISTANT CHIEF USHER, HAS BEEN APPOINTED BY THE PRESIDENT TO SUCCEED MR. SCOUTEN.

MR. CHAIRMAN, I SHALL BE PLEASED TO ANSWER ANY QUESTIONS YOU AND OTHER MEMBERS OF THE COMMITTEE MAY HAVE ABOUT THE OPERATION OF THE EXECUTIVE RESIDENCE AND THE BUDGET REQUEST BEFORE YOU. (2)

3/18/86

Rex W. Scouten

After more than 37 years of distinguished federal service - the last 16 as Chief Usher of the White House - Rex Scouten retired on January 3, 1986.

President Ronald Reagan cited Rex Scouten's superior accomplishments by presenting him the President's Award For Distinguished Federal Civilian Service in an Oval Office ceremony on February 7, 1986. In commending Rex Scouten, the President stated that he "has consistently demonstrated resourcefulness, good taste, sound judgement, and tireless devotion to duty." The President also said "Rex Scouten has been a model civil servant, a living paradigm of the high ideals and devotion to duty of all unsung heroes who dedicate their lives to serve their country with unfailing zeal, honor, and fidelity."

From the very beginnings of his federal service career, Rex Scouten's paramount concern has always been the comfort and safety of the Nation's Chief Executive and his family. As a special agent with the United States Secret Service from 1949 to 1957, Rex Scouten exercised vigilance and self-sacrifice in protecting the First Family.

After 8 years with the U.S. Secret Service, Rex Scouten became Assistant Usher at the White House, where he continued his pursuit of safety, privacy and comfort for the First Families he would serve.

From 1966 to 1969, Rex Scouten worked with the National Park Service as assistant Regional Director for White House Liaison. In this position he made significant contributions to Lady Bird Johnson's beautification campaign and strengthened the National Park Service's role in historic preservation and interpretation of the White House.

Rex Scouten returned to the White House in 1969 as Chief Usher, serving as "Major-Domo" until his retirement in 1986. An enumeration of Rex Scouten's accomplishments in service to the Chief Executive and his family would be nearly ceaseless. He has travelled in 35 countries to coordinate preparations for presidential travel; he has planned and supervised major ceremonies of state, in happy times and in sad; he has carefully watched over the development of the formal gardens and grounds of the White House in strict adherence to the historic landscape design; and he has tirelessly provided for the enjoyment of the White House residence by the many First Families he has served.

We in the federal service join the President in commending Rex Scouten's life of public service and salute him as a wise guardian and steward of one of this Nation's foremost historic treasures.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

FY 1987 Appropriation Summary Statement

This budget provides for the care, maintenance, repair and alteration, refurnishing, improvement, heating and lighting, including electric power and fixtures, of the Executive Residence at the White House and official ceremonial expenses of the President to be expended and accounted for as provided by 3 U.S.C. 105, 109-110, 112-114.

The appropriation for this account for Fiscal 1986 was $4,577,000. An appropriation of $4,942,000 is requested for Fiscal 1987.

The FY 1987 budget provides for:

1.	Non-recurring funds for replacement of the wood parlor floors.	$125,000
2.	Restoration of the five percent salary reduction incurred in FY 1986. Initial government-wide salary reduction proposed did not pass through the Appropriation process.	$180,000
3.	Utilities, materials, equipment, furnishings, and other services needed to perform essential functions.	$ 60,000
		$365,000

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

Analysis by Activities
(Dollars in thousands)

	FY 1985 Amount Available	FY 1986 Amount Available	FY 1987 Amount Estimate	Increase (+) or Decrease (-) 1987 Compared with 1986
Operating Expenses	$4,658	$4,577	$4,942	$+365

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

Justification for Appropriation, Fiscal 1987
(in thousands of dollars)

Activity: Operating Expenses	1985 ACTUAL	1986 ESTIMATE	1987 ESTIMATE	INCREASE/ DECREASE
Operating Expenses	4,658	4,577	4,942	+365
Full-time Permanent Positions	(91)	(93)	(93)	(...)
Total Compensable Workyears in Full-time Equivalents (FTE)	(91)	(93)	(93)	(...)

Authorization: 3 U.S. Code 105, 109-110, 112-114

Objective: To provide for the care, maintenance, repair and alteration, refurnishing, improvement, heating and lighting, including electric power and fixtures, of the Executive Residence at the White House, and official and ceremonial functions of the President.

Program:

The Executive Residence staff provides for the operation of the Executive Residence. A staff of 39 domestic employees accomplishes general housekeeping, prepares and serves meals, greets visitors, and provides services as required in support of official and ceremonial functions. A staff of 32 tradespersons, including plumbers, carpenters, painters, on a single shift; electricians on a double shift; and operating engineers on a 24 hour basis, maintains and makes repairs, minor modifications, and improvments to the 132 rooms and the mechanical systems, and provides support for official and ceremonial functions.

A staff of 13 employees provides services necessary to the operation of the White House and official and ceremonial functions. This staff includes 4 florists, 4 curators, and 5 calligraphers.

An administrative staff consists of the Chief Usher, 3 Assistant Ushers, 1 Executive Grounds Superintendent, 2 Administrative Assistants, 1 Chief Accountant, and 1 projectionist. This staff is charged with management and administrative functions of the Executive Residence. This requires coordination with the staff of Congress, the Executive Office of the President, the National Park Service, the Military, the United States Secret Service, the General Services Administration and other agencies.

The equivalent of 3 full-time workyears of extra staff above the ceiling for full-time permanent positions are hired under personal services contract agreements ("Service by agreement") to provide additional help as required for official and ceremonial functions.

Current Accomplishments:

The White House is maintained as a home for the President and his family, a public museum and a facility for official and ceremonial functions.

The White House is open for public tours Tuesday through Saturday in addition to some national holidays, the evening Candlelight Tours at Christmas, the Easter Monday Egg Roll, and spring and fall Garden Tours. During 1985 an average of 5,141 visitors toured the White House each day for 244 days. 19,734 people viewed the White House during the 1985 Christmas candlelight tours, and 31,589 people participated in the 1985 Easter Egg Roll.

Budget Considerations:

Funding for the following items is requested in Fiscal 1987 to continue to provide for the normal operation and maintenance needs of the Residence:

1. Non-recurring funds for replacement of the wood parlor floors.	$125,000
2. Restoration of the five percent salary reduction incurred in FY 1986. Initial government-wide salary reduction proposed did not pass through the Appropriation process.	$180,000
3. Utilities, materials, equipment, furnishings, and other services needed to perform essential functions.	$ 60,000
	$365,000

EXECUTIVE RESIDENCE AT THE WHITE HOUSE
Operating Expenses
(in thousands of dollars)

Identification code 11-0210-0-1-802		1985 ACTUAL	1986 ESTIMATE	1987 ESTIMATE
Program by activities:				
	Direct Program: Operating Expenses	4,656	4,577	4,942
	Reimbursable Program:	785	1,045	1,106
10.0	Total Obligations	5,441	5,622	6,048
Financing:				
	Offsetting collections from:			
11.0	Federal funds	-446	-591	-626
14.0	Non-Federal sources	-339	-454	-480
25.0	Unobligated balance lapsing	2	—	—
		4,658	4,577	4,942
Budget authority:				
40.00	Appropriation	4,601	4,577	4,942
44.10	Supplemental for wage board pay raises	26	—	—
44.20	Supplemental for civilian pay raises	31	—	—
Relation of obligations to outlays:				
71.00	Obligations incurred, net	4,656	4,577	4,942
72.40	Obligations balance, start of year	250	276	276
74.40	Obligated balance, end of year	-276	-276	-276
77.00	Adjustments in expired accounts	-26	—	—
90.00	Outlays, excluding pay raise supplemental	4,604	4,577	4,942

Identification code 11-0210-0-1-802		1985 ACTUAL	1986 ESTIMATE	1987 ESTIMATE
Direct Obligations:				
	Personnel compensation:			
11.1	Full-time permanent	2,603	2,649	2,813
11.5	Other personnel compensation	537	622	618
11.9	Total personnel compensation	3,140	3,271	3,431
	Other:			
12.1	Personnel benefits: civilian	321	326	346
21.0	Travel and transportation of persons	3	3	3
23.2	Communications, utilities, rent	214	205	240
25.0	Other services	328	265	390
26.0	Supplies and materials	573	442	477
31.0	Equipment	77	65	55
99.0	Subtotal direct obligations	4,656	4,577	4,942
99.0	Subtotal reimbursable obligations	785	1,045	1,106
99.9	Total obligations	5,441	5,622	6,048

Personnel Summary

	1985	1986	1987
Total number of full-time permanent positions	91	93	93
Total compensable workyears			
Full-time equivalent employment	91	93	93
Full-time equivalent of overtime and holiday hours	12	12	12
Reimbursable:			
Total compensable work years:	-		
Full-time equivalent employment	103	105	105

Mr. **Hoyer**. Thank you for your testimony. I assume Mr. Scouten retired before we changed the annuity rules on him, before we went to five years to conclude what his benefit level would be and before we said that he had to work longer.

I don't know how old Mr. Scouten was, but in any event, he has successfully eluded some of the most dramatic and, I think, contrary changes that have been proposed.

You don't need to comment on that.

Mr. **Fish**. He had 37 years.

Mr. **Hoyer**. So, under anybody's rules he would have done all right.

Mr. **Fish**. He started with the Secret Service as an agent for eight years and worked in the job Mr. McDaniel is in for four years in the National Park Service, and then went on to become Chief Usher.

OFFICIAL ENTERTAINMENT EXPENSES

Mr. **Hoyer**. What was the actual cost in 1985 for official entertainment expenses of the President, and what is the estimate for what the 1986 and 1987 expenditures will be?

Mr. **Fish**. I don't have those figures, but it usually runs around $240,000 to $250,000. The people served at those official ceremonies and functions run about 35,000 people.

We anticipate 35,000 this year and about 30,000 in 1985, about 30,000 in 1986.

Mr. **Hoyer**. What does that include, 30,000 people for $250,000?

Mr. **Fish**. Served at the official ceremonies and functions at the White House. They could be a group coming to the White House for awards, members of Congress.

Mr. **Hoyer**. It would not necessarily be people who were fed hors d'oeuvres——

Mr. **Fish**. There would be hors d'oeuvres, that type of thing.

Mr. **Hoyer**. A dinner, that sounds like seven dollars a head.

Mr. **Fish**. State dinners are paid for by the State Department. They are not out of this account here.

Mr. **Hoyer**. Can you get us those figures?

Mr. **Fish**. Yes sir.

[The information follows:]

An appropriation is provided in the amount of $50,000 per year in the Executive Office of the President budget for official entertainment expenses of the President.

Mr. **Hoyer**. What guidelines do you have regarding what is or is not official expenditures?

Mr. **Fish**. Well, basically what I was saying, the official guest could be a foreign dignitary, a member of Congress, representatives of labor, business groups, judges, recipients of awards, national organizations, attendees at official ceremonies and functions.

Mr. **Hoyer**. A pretty broad definition.

Mr. **Fish**. Yes, sir.

STAFF AT THE EXECUTIVE RESIDENCE

Mr. **Hoyer**. Are all the positions funded for the executive residence career positions?

Mr. **Fish**. They are not career in the sense that they would come under OPM. They serve at the pleasure of the President, but they are basically a career staff.

Many of the employees have been there 20 or 25 years, and it is a really excellent staff of very dedicated workers. There are 93 on the staff including the Chief Usher.

VISITATION

Mr. **Hoyer**. How many visitors visited the White House in 1985, and what is projected for 1987?

Mr. **Fish**. In 1985 there were 1,254,376 visitors.

Projected—it is hard to project because it depends on the number of days that you can keep the House open, and so there are some days that something comes up, and you may have to close the House. But basically, it is open Tuesday through Saturday, and we would average probably 1.4 million, 1.5 million visitors a year and the House would be open maybe 230, 240 days of the year.

Mr. **Hoyer**. This question isn't on here. Who handles the congressional passes? Does it come out of this office?

Mr. **Fish**. It is a visitor's office at the White House.

Mr. **Hoyer**. That is not in this budget?

Mr. **Fish**. That is not in this budget, no, sir.

Mr. **Hoyer**. Which budget is that in?

Mr. **Fish**. That is in the National Park Service budget.

Mr. **Skeen**. Now you see it; now you don't.

Mr. **Hoyer**. Now we do see it. Fine. Now we have located the point of interest, we will keep that in mind.

Mr. **Fish**. Yes, sir, Mr. Chairman.

Mr. **Hoyer**. I would like to now recognize the distinguished ranking member of the committee.

Mr. **Skeen**. I thank the distinguished chairman. I am glad to see that you have risen to your real potential.

Mr. **Hoyer**. I could say so many things about your expectations about what my real potential is. If this is your expectation of having risen to it, I am not sure——

Mr. **Skeen**. We are doing an evaluation of it.

I apologize for not being earlier.

RESTORATION OF SALARY REDUCTION

I would like to ask you, what was the justification for the restoration of the five percent salary reduction that was not restored in the Fiscal Year 1986 budget, amounting to some $180,000, I believe?

Mr. **Fish**. Actually, the $180 thousand is the restoration of the five percent, but also it includes the merit and step increases, personnel benefits, terminal leave payments for people that are retiring, and the justification is that we felt that—every other agency——

Mr. **Skeen**. Got their's and we didn't?

Mr. **Fish**. Got their five percent, and we have had to cut back a significant amount of projects at the White House as a result of that, and that is why we had asked that the five percent and these other merit increases be restored.

Mr. **Skeen**. I was curious, because we had a great display here before this committee about cutting the five percent across, and I think most of it was recovered except in this instance. Is this not true?

Mr. **Fish**. That is true. I know in the National Park Service——

GRAMM-RUDMAN REDUCTIONS

Mr. **Skeen**. So much for perception. How does the Gramm-Rudman reduction affect this particular account in Fiscal Year 1986?

Mr. **Fish**. That amounts to about $197,000.

Mr. **Skeen**. So you have still got a net loss?

Mr. **Fish**. Oh, yes, sir. But basically what we tried to do or are trying to do in 1986 is to reschedule the visits, so if someone comes to visit the President, rather than do it on a day when we have to pay overtime, if it can work out and, of course, it doesn't always, we try to schedule it on regular time.

Mr. **Skeen**. You have a little trouble scheduling dignitaries on metered time?

Mr. **Fish**. But we have not been able to get the additional help that we need at the various functions.

We have not been able to keep up with the maintenance, as I mentioned in the opening statement. We have not been able to—for example, purchase steam valves and heating coils, we have to keep those in stock, because if something happens—and we keep an operating engineer around the clock at the White House.

A lot of equipment is old, and you can't just go to the hardware store and get that piece. And it needs to be done, and it could be on the evening or weekend, any time.

So, it is that type of thing that we are reducing this year that we have asked for help in 1987.

Mr. **Skeen**. Your 1987 budget restores that?

Mr. **Fish**. Yes, sir.

GSA ROLE

Mr. **Skeen**. What part of the White House complex is subject to the SLUC charge with GSA?

Mr. **Fish**. It is not, since it is not an office in the terms that GSA would characterize it.

Mr. **Skeen**. Neither the east or west wings are involved?

Mr. **Fish**. That is under GSA, so that is not part of this——

Mr. **Skeen**. It doesn't have anything to do with SLUC, though, the east or west wing?

Mr. **Fish**. That I don't know. It does—but that is under GSA.

Mr. **Skeen**. Any part of the White House complex that is under GSA; that is, either the east or west wings?

Mr. **Fish**. Yes, sir.

Mr. **Skeen**. Are any of the renovations or restorations of the White House paid for from the Federal Building Fund?

Mr. **Fish**. No, sir. The building itself, the residence, is under the jurisdiction of the National Park Service, being a historic site.

We are working on the heating and air conditioning system. We have worked on the electric system. And those types of things are funded through the National Park Service construction appropriation.

Mr. **Skeen**. What is the Federal Building Fund?

Mr. **Fish**. I assume that must be at GSA.

Mr. **Skeen**. That is a GSA account. I see.

Mr. **Fish**. They may—in the east or west wing they may draw on the fund. I don't know.

DONATIONS TO THE WHITE HOUSE

Mr. **Skeen**. Do you have any donations made by private groups for the operation and maintenance or restoration of the White House?

Mr. **Fish**. We did early on in the administration and got a lot of work done on the family quarters.

But we have a White House Historical Association, and they sell the books and prints of paintings at the White House and things like that, and so the receipts from the White House Historical Association—which was set up in 1961 and is very similar to what we have throughout the National Park System—they return those funds for furnishings, paintings, and so forth.

And as a matter of fact——

Mr. **Skeen**. So there is some impact from private donations?

Mr. **Fish**. Yes, sir, and there are straight out donations at various times to the House, too, but the White House Historical Association, I think, over the years—I have a figure here to give you an idea of their contribution.

It runs about $4 million, as I recall. Four and a half million dollars have been collected by the White House Historical Association.

Mr. **Skeen**. Over how long?

Mr. **Fish**. Since it was started back in the Kennedy administration in 1961.

Mr. **Skeen**. Thank you very much.

Mr. **Fish**. Thank you, Mr. Chairman.

Mr. **Hoyer**. I am going to have to leave.

We have Secretary Bennett before my other committee, and I am going to turn the reins over to Mr. Akaka.

WHITE HOUSE HISTORICAL ASSOCIATION

Mr. **Fish**. Mr. Chairman, these are some of the prints that the White House Historical Association does sell of paintings that are in the White House, and I would like to present a set to you and to the other members.

Mr. **Hoyer**. How nice. Thank you.

Mr. Akaka will now take over.

Mr. **Akaka** [presiding]. Are there any other questions?

On the presentation of this, I would say I have no questions. Thank you very much.

TUESDAY, APRIL 8, 1986.

NATIONAL SECURITY COUNCIL

WITNESS

RODNEY B. McDANIEL, EXECUTIVE SECRETARY, NATIONAL SECURITY COUNCIL

MARY DIX, ADMINISTRATIVE OFFICER, NATIONAL SECURITY COUNCIL

Mr. AKAKA. Next is the National Security Council. We welcome Rodney McDaniel, the Executive Secretary of the National Security Council. We look forward to your testimony and will include it in its entirety in the record.

You may begin.

Mr. RODNEY B. McDANIEL. I am joined by Mrs. Mary Dix, our Administrative Officer. We have given you an exhibit, and a short opening statement. I would open by saying the National Security Council was created in 1947. It is the major interagency mechanism that coordinates national security policy; and the money we are talking about here would fund the staff within the Executive Office of the President that supports the National Security Council function.

We are asking for a level budget relative to 1986. The only issue I could address is that the 1987 number we are asking for is the 1986 number before the Gramm-Rudman sequestration.

In effect, we are not taking the sequestration out of our 1987 request. We have had about $199,000 deducted in 1986 as a result of Gramm-Rudman and we are accommodating that reduction by limiting expenditures in areas where we had more flexibility, i.e. moving equipment, telephones and limiting the hiring of support staff. We hope that we would not have that amount removed from our 1987 base. It is a level program and about everything that was said last year is applicable this year.

I am open to your questions.

[The statement of Rodney B. McDaniel follows:]

STATEMENT OF RODNEY B. McDANIEL, EXECUTIVE SECRETARY OF THE NATIONAL SECURITY COUNCIL

Mr. Chairman, the National Security Council (NSC) was established by statute after World War II to provide a mechanism for review and decision by the President of policies relating to the national security. The flexible structure of the NSC system allows for coordinated development, presentation and implementation of policy decisions. Faced with the realities of an increasingly complex and ever-changing world situation, this system has proved to be a durable institution.

Today, we are considering a request for $4,627,000.00 for the expenses of the National Security Council. This appropriation would fund the professional staff that supports the National Security Council. In addition, the appropriation provides for operation of the President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board.

Mr. Chairman, the details of this request have been made available to the Subcommittee. I would be pleased to answer any questions.

FUNCTIONS OF THE NATIONAL SECURITY COUNCIL

Mr. AKAKA. Does that mean that you perform the same day-to-day——

Mr. RODNEY B. MCDANIEL. Pretty much the same. We have had John Poindexter come in and take Bud McFarlane's place. He has been at the White House for 4½ years. The organization pretty much reflected John's input to begin with and the only change we are making in the organization which does not affect the budget is that we have created two deputy positions, one for foreign policy and one for defense policy. They are two senior individuals with the rank of Deputy Assistant to the President who are allowed a little more time to think about longer range issues, the effects of defense and foreign policy.

We brought Peter Rodman in from the State Department where he had been head of the Policy Planning Group to be the Deputy Assistant to the President for Foreign Policy, and, we have Ronald Lehman as the Deputy for Defense Policy.

Mr. Lehman has since been announced by the President to replace Senator Tower so we are looking for a replacement for him. Basically we are doing pretty much the same thing with the same staff and the same organization.

Mr. AKAKA. As you have mentioned on a day-to-day basis it has been the same. My one question—I have others we will submit for the record—how do you function in an emergency situation?

Mr. RODNEY B. MCDANIEL. Well, when the Administration first came in, they set up a structure that has remained pretty much the same throughout the last five years and that structure is a group within the National Security Council called a Special Situation Group chaired by the Vice President. It pulls together, at a senior level, the Cabinet officers from Defense, State, Intelligence and the military to talk about crisis events. Under that, there is a second group called the Crisis Preplanning Group chaired by the Senior Deputy to Poindexter.

The Crisis Preplanning Group has the Under Secretary of State for Political Affairs, the Under Secretary of Defense for Policy, the Assistant to the Chairman of the Joint Chiefs of Staff, and the Deputy Director of CIA for Operations. That is the working group that creates options for the President in a crisis situation. They meet when a crisis is first detected. Whenever possible, they meet before the crisis has erupted and try to develop a plan to avoid having the crisis happen.

This working group was involved with the Philippine situation from late summer through the developments that took place fairly recently. The Crisis Preplanning Group then makes recommendations to the full National Security Council that meets with the President. The Crisis Preplanning Group will have completed all advance work so that the group that meets with the President can talk about specific options. The President will ask questions and they pretty much decide on specific options.

Then the meeting adjourns and an order goes out as to whether it will be a diplomatic option, economic sanctions or a military operation. The staff monitors the situation giving the President as frequent a report as is necessary. Admiral Poindexter might report to the President on the phone or he might make up a briefing paper and give it to the President; and, if necessary, we will have follow-up meetings and keep working it until the crisis is resolved.

That is the structure that has been in place for the last five years. It is not that much different from other Administrations, but it seems to have worked very well. The players know each other, there has been a lot of continuity in the particular group and I believe it is very effective.

Mr. Akaka. Seeing the way things have been happening, you have been in an emergency function mode with Marcos and Libya.

Mr. Rodney B. McDaniel. I guess it has worked out to be a crisis a month.

Mr. Skeen. It is good steady employment.

Mr. Rodney B. McDaniel. I don't think it is going to go away.

Mr. Akaka. Mr. Skeen?

Mr. Skeen. I don't have any questions.

The Gramm-Rudman reduction was $199,000 and the increase over fiscal year 1986 was 199—I like a good, straightforward recoupment. Well done. It is a good budget.

Mr. Akaka. Mr. Wolf?

Mr. Wolf. I just want to welcome you to the committee. What is your typical day hourwise?

Mr. Rodney B. McDaniel. Seven o'clock until about 8:30.

Mr. Wolf. Ever get time to spend with your family?

Mr. Rodney B. McDaniel. Not very much.

Mr. Wolf. Thank you, Mr. Chairman.

Mr. Akaka. Thank you, Mr. Wolf, and we thank you very much for your testimony, Mr. McDaniel.

We have some questions for you to be answered later for the record.

[The questions to be furnished follow:]

Review of Information

Mr. Roybal. To what extent does the NSC review and summarize intelligence information from the intelligence community?

Mr. McDaniel. The NSC staff operates primarily on all types of information received from the respective departments and agencies in the National Security Community. One of the chief elements of the National Security Community is the Intelligence Community: CIA, Defense Intelligence Agency, and other members. Those reports are received from the Intelligence Community on a daily basis. They are reviewed and analyzed by our staff and passed by our staff through the National Security Adviser to the President on a daily basis.

Mr. Roybal. To what extent does the NSC review and summarize positions of the Departments of State, Defense and other government agencies?

Mr. McDaniel. The NSC staff is designed to bring together the four pillars of national security—foreign policy, defense policy, economic policy, and intelligence operations—in a way that supports the President's and the National Security Council's ability to make wise and timely decisions.

Our function is not intended to dominate the policy making process. Instead, it must perform the much more difficult task of policy facilitation and coordination, while still exercising enough power and influence to initiate and guide policy as necessary. It is a difficult balance. We must present issues to the President from a perspective that transcends individual agency perspectives to encompass the policies and concerns of the Administration as a whole.

INTELLIGENCE ADVISORY BOARDS

Mr. Roybal. Does any part of this appropriation go to support the Intelligence Oversight Board; the President's Foreign Intelligence Advisory Board?

Mr. McDaniel. Of the total appropriation requested for FY87, $401,000 will go to fund the Intelligence Boards. The Boards are separate entities created by Executive Order and they serve the President directly.

ORGANIZATION OF THE NATIONAL SECURITY COUNCIL

Mr. Roybal. What is the composition of the National Security Council? (What agencies are represented?)

Mr. McDaniel. The National Security Act of 1947 created the Council. Membership consists of four individuals: the President, Vice President, Secretary of State, and Secretary of Defense. There are also statutory advisors to the Council. Those include the Director of Central Intelligence, the Chairman of the Joint Chiefs of Staff, the Director of the U.S. Information Agency, and the Director of the Arms Control and Disarmament Agency.

There are also attendees at the NSC designated by the President rather than by Statute. Included among these would be the Chief of Staff of the White House, Mr. Regan, the Assistant for National Security Affairs, Admiral Poindexter, and others as the President may designate from time to time.

Sufficient flexibility in the actual participation in any particular meeting of the NSC is maintained so that the President has available to him advice from all those in the Executive Government who have an interest in a particular issue. The NSC staff is assisted by the departmental staffs of the participating agencies as necessary.

Mr. Roybal. Does the Council meet on a regular basis or only on call of the President?

Mr. McDaniel. The Council has averaged about two meetings a month since the start of the Administration. These meetings are actual policy making sessions at which the President seeks out debate and differences of opinion among the Council members. The President's decisions are often based on these discussions and the meetings usually culminate with specific implementation directives. The meetings also serve an important consensus building function and support implementation by communicating clear presidential commitment to specified courses of action.

STAFFING LEVELS

Mr. Roybal. How many personnel do you employ? How many personnel are on detail to the NSC? Are those reimbursable details?

Mr. McDaniel. Our appropriation funds a group of 61 individuals. In addition, we have 60 non-reimbursable detailees from other agencies, and seven reimbursable support detailees for a total of 128 individuals. Time has proven that not only does the NSC benefit; but, the individuals detailed here accumulate knowledge and experience that prove to be very valuable in their careers. Most of our detailees come to us from the State Department, the Department of Defense and the Central Intelligence Agency, although, we do have representatives from other agencies such as Commerce and the National Archives.

[The biographical sketches of Mr. McDaniel, Mrs. Dix and justifications follow:]

Biographical Sketch of Rodney B. McDaniel

Mr. McDaniel was appointed by the President in 1986 to the position of Executive Secretary of the National Security Council. He also retained his previous designation as Special Assistant to the President for National Security Affairs, and Senior Director of the Crisis Management Center, National Security Council (NSC). As Executive Secretary of the NSC, Mr. McDaniel directs the NSC Staff in support of the President and his Assistant for National Security Affairs.

Before joining the National Security Council staff, he served 28 years in the United States Navy. Prior service included sea duty in destroyers, tours with the Secretary of Defense Staff, CIA, and the Navy Department, concerned with force and program planning and strategy development. He had command of the guided missile destroyer USS *William V. Pratt* and the cruiser USS *Oklahoma City*, and served as Chief of Staff to the Commander of the Seventh Fleet. Mr. McDaniel retired from the Navy and joined the NSC Staff in 1985 as a Special Assistant to the President and Senior Director for Crisis Management and Emergency Preparedness Planning.

Mr. McDaniel received a BA in Economics at Stanford University in 1956 and an MBA at George Washington University in 1961.

Mr. McDaniel lives in Arlington, Virginia. He was born on April 4, 1934.

BIOGRAPHICAL SKETCH OF MARY A. DIX

Mrs. Dix is the Administrative Officer for the National Security Council. She has served in this capacity since May 1984.

Mrs. Dix was raised in Minnesota and received her Bachelor of Science Degree in Education in 1969 and her Master's Degree in Program Development in 1976 from the University of Minnesota. Mrs. Dix taught high school English in Northern Minnesota from 1969–1978. She joined the United States Army from 1978–1982 during which time she served in the Office of the Chief of Staff, Army, and was also the speechwriter for the Sergeant Major of the Army. She earned both the Army Commendation Medal and the Meritorious Service Medal.

In 1982, Mrs. Dix was employed as the Administration Manager for a computer association in Rosslyn, Virginia, where her responsibilities covered the areas of finance, administration and the registration process for the largest computer conference in the United States. In 1983, she joined the Office of Administration as a management analyst where she developed organizational procedures for the Administrative Operations Division.

Mrs. Dix lives in Alexandria, Virginia, with her husband, Marvin. She was born on September 18, 1947.

NATIONAL SECURITY COUNCIL

BUDGET ESTIMATES FOR FISCAL YEAR -- 1987

Preparation for the 1987 Budget Presentations
for the House/Senate Subcommittee
Hearings on Appropriations

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NATIONAL SECURITY COUNCIL

SUMMARY AND HIGHLIGHT MEMORANDUM - FISCAL YEAR 1987

The National Security Council (NSC) was established by the National Security Act of 1947, 50 U.S.C. section 401 et seq. By Reorganization Plan Number 4, effective August 20, 1949, the Council was placed in the Executive Office of the President.

The statutory function of the NSC is to advise the President with respect to the integration of domestic, foreign, and defense policies related to the national security. Subject to direction by the President, it is the responsibility of the Council to assess and appraise the objectives of the United States on matters of common interest to the departments and agencies of the Government, and to make such recommendations and such other reports to the President as it deems appropriate or as the President may require.

Council members are: the President, the Vice President, the Secretary of State, and the Secretary of Defense. The Joint Chiefs of Staff are the military advisers to the Council and the Director of Central Intelligence is its intelligence adviser.

The NSC Staff, the element funded by this budget request, is headed by the Executive Secretary, and provides day-to-day support for the President and his Assistant for National Security Affairs. It seeks to ensure that national security information provided to the President is responsive to his needs, and is properly coordinated among the departments and agencies within the Executive Office of the President. The Staff prepares policy presentations and arranges meetings for the President and the Council on national security matters.

This appropriation also provides funding for the President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board.

NATIONAL SECURITY COUNCIL

SALARIES AND EXPENSES

For expenses necessary for the National Security Council, including services as authorized by 5 U.S.C. 3109.

$4,627,000 -- FY-87

NATIONAL SECURITY COUNCIL

PROGRAM AND PERFORMANCE

The National Security Council advises the President with respect to the integration of domestic, foreign, and defense policies related to national security.

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STANDARD FORM 300
July 1954, Bureau of the Budget
Circular No. A-11, Revised
300-101

National Security Council
Salaries and Expenses

Program and Financing (in thousands of dollars)

Identification code 11-2000-0-1-802	1985 actual	1986 estimate	1987 estimate
Program by activities:			
00.01 Policy and operations coordination	3,973	4,226	4,226
00.02 President's intelligence advisory boards	345	401	401
10.00 Total Obligations	4,318	4,627	4,627
Financing:			
25.00 Unobligated balance lapsing	287	—	—
40.00 Budget authority (appropriation)	4,605	4,627	4,627
Relation of obligations to outlays:			
71.00 Obligations incurred, net	4,318	4,627	4,627
72.40 Obligated balance, start of year	1,098	811	1,009
74.40 Obligated balance, end of year	-811	-1,009	-1,009
77.00 Adjustments in expired accounts	-151	—	—
90.00 Outlays	4,454	4,429	4,627

Summary of Budget Authority and Outlays
(in thousands of dollars)

	1985	1986	1987
Enacted/requested:			
Budget authority	4,605	4,627	4,627
Outlays	4,454	4,429	4,627
Reduction pursuant to P.L. 99-177:			
Budget authority	—	-199	—
Outlays	—	-156	-43
Total:			
Budget authority	4,605	4,428	4,627
Outlays	4,454	4,273	4,584

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STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised
300-101

National Security Council
The President's Foreign Intelligence Advisory Board,
and The President's Intelligence Oversight Board
Salaries and Expenses
Object Classification (in thousands of dollars)

Identification code	11-2000-0-1-802	19 85 actual	19 86 estimate	19 87 estimate
	Personnel compensation:			
11.1	Full-time permanent	2,041	2,404	2,404
11.3	Other than full-time permanent	232	155	155
11.5	Other personnel compensation	126	145	145
11.8	Special personnel services payments	258	250	250
11.9	Total personnel compensation	2,657	2,954	2,954
12.1	Personnel benefits: Civilian	233	265	265
21.0	Travel and transportation of persons	263	350	350
23.1	Standard level user charge	472	472	472
23.2	Rental payments to others:	10	10	10
23.3	Communications, utilities, and miscellaneous charges	316	303	303
24.0	Printing and reproduction	6	5	5
25.0	Other services	167	154	154
26.0	Supplies and materials	73	60	60
31.0	Equipment	121	54	54
99.9	Total obligations	4,318	4,627	4,627
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NATIONAL SECURITY COUNCIL

PERSONNEL SUMMARY

11-2000-0-1-802	19 85	19 86	19 87
Total Number of Full Time Permanent Positions	53	61	61
Full Time Equivalent Employment	59	63	63
Full Time Equivalent of Overtime and Holiday Hours	4	4	4
TOTAL COMPENSABLE WORKYEARS	63	67	67
Average Support Staff Grade Level	8.93	8.96	9.02
Average Support Staff Salary	$25,708	$25,695	$26,419
Average Professional Staff Grade Level	15.76	15.66	15.69
Average Professional Staff Salary	$58,507	$58,526	$59,738
Overall Grade Average	11.59	11.76	11.79
Overall Salary Average	$38,463	$39,280	$39,864
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STANDARD FORM 300
July 1, 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

National Security Council
Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code 11-2000-6-1-802	1985 actual	1986 estimate	1987 estimate
Program by activities:			
10.00 Total obligations	—	-199	—
Financing:			
40.00 Budget authority (appropriation)	—	-199	—
Relation of obligations to outlays:			
71.00 Obligations incurred, net	—	-199	—
72.40 Obligated balance, start of year	—	—	-43
74.40 Obligated balance, end of year	—	43	—
90.00 Outlays	—	-156	-43

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STANDARD FORM 300
July 1948, Bureau of the Budget
Circular No. A-11, Revised.
300-103

NATIONAL SECURITY COUNCIL

FY-87

DETAIL OF PERMANENT POSITIONS

11-2000-0-1-802	19 85 actual	19 86 estimate	19 8 estimate
Executive Level IV	1	1	1
GS-18	5	5	6
GS-17	3	2	2
GS-16	1	1	4
GS-15	7	7	8
GS-14	3	3	2
GS-13	1	1	3
GS-12	2	2	2
GS-11	4	4	3
GS-10	8	8	8
GS-9	10	10	9
GS-8	0	1	1
GS-7	4	4	6
GS-6	9	9	4
GS-5	0	3	2
Total Permanent Positions	61	61	61
Unfilled Positions, End of Year	3	0	0
Total Permanent Employment	58	61	61

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FY '86 (In Thousands)	FY '87 (In Thousands)		Change (In Thousands)
		PERSONNEL COMPENSATION AND BENEFITS	
3,219	3,219	FY 87 - $3,219,000 Funding levels for the National Security Council are primarily determined by expenditures for personnel. 69.6% of the total funds requested for FY87 are for personnel. Funds in the amount of $2,404,000 would provide for the full-time permanent employees in FY87 for the National Security Council and the President's Foreign Intelligence Advisory Board. No additional permanent positions are being requested in the FY87 submission. No additional funds are being requested in FY87 for Personnel Compensation and Benefits.	NONE
		TRAVEL	
350	350	FY 87 - $350,000 The $350,000 is required for travel by the National Security Council and the Advisory Boards in support of the President on Presidential and cabinet-level trips.	NONE
		STANDARD LEVEL USER CHARGES	
472	472	FY 87 - $472,000 There is no increase in funding for the cost of currently occupied space based on guidance from the General Services Administration. The FY86 rates will remain in effect during FY87. There is no increase in space projected for FY87.	NONE
		COMMUNICATIONS, OTHER RENT AND UTILITIES	
313	313	FY 87 - $313,000 There is no increase in funding requested for Communications, Other Rent and Utilities. Present funding will allow for a continuation of present services.	NONE

FY '86	FY '87		Change
(In Thousands)			(In Thousands)
		PRINTING	
5	5	FY 87 - $5,000	NONE
		Previous printing requirements reflect no need for an increase in funding.	
		OTHER SERVICES	
154	154	FY 87 - $154,000	NONE
		There is no requested increase in funding for Other Services. This level of funding will allow for a continuation of our present requirements.	
		SUPPLIES	
60	60	FY 87 - $60,000	NONE
		There is no requested increase in funding for Supplies. The continued level of funding will allow for projected requirements.	
		EQUIPMENT	
54	54	FY 87 - $54,000	NONE
		There is no requested increase in funding for Equipment.	
4,627	4,627	TOTALS	NONE

TUESDAY, APRIL 8, 1986.

OFFICE OF FEDERAL PROCUREMENT POLICY

WITNESSES

TIMOTHY J. MURIS, EXECUTIVE ASSOCIATE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

DAVID F. BAKER, ACTING ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

WILLIAM J. MARAIST, ACTING ASSOCIATE ADMINISTRATOR FOR POLICY DEVELOPMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. AKAKA. We will now receive the testimony of Tim Muris, Executive Associate Director, Office of Management and Budget.

We will include your testimony in its entirety in the record and you may present it in any way you wish. I would like at this time to pass the gavel on to Mr. Skeen.

Mr. SKEEN. Thank you very much, Mr. Chairman.

Go ahead.

Mr. MURIS. Thank you, Mr. Chairman.

Let me briefly summarize a few points.

I have here today with me Mr. David Baker, Acting Administrator, Office of Federal Procurement Policy, and Mr. William Maraist, Acting Associate Administrator for Policy Development.

OFPP is a small line item. We are requesting $1,660,000, a very slight increase from 1986, which is primarily for office space costs and salaries due to routine promotions.

It is important to understand that concern for reforming the procurement process has been very important to the President. He submitted in 1982 a comprehensive proposal to Congress for a Uniform Federal Procurement System. In 1982, the President issued Executive Order 12352, the first executive order in history to focus solely on the reform of the Federal procurement processes. Many of the features of the Uniform Federal Procurement System proposal and of the executive order have now been embodied in the Competition in Contracting Act of 1984 and other recently enacted statutes.

There is still more to be done, however, and we will continue to do that through the rest of this year and in 1987. Two of the actions that we are most interested in have been recently incorporated into two bills introduced in the Senate. One would revise the current testing authority to permit easier testing of various procurement innovations under controled conditions, making the testing authority more like what OPM has. The other would authorize implementation of the Simplified Competitive Acquisition Technique, SCAT. That process would provide an alternative to sole sourcing by reducing some procurement lead times from an average of 224 days to 75 to 100 days. These proposals bear considerable promise, and we will be working on them. Parts can be implemented administratively, and we intend to do so this year and next.

We also have other initiatives underway. We are committed to insuring that the degree of competition is increased; that the procurement process be further simplified and streamlined; and that the Federal procurement work force be better trained.

There are also issues involved in implementation of the recent Packard Commission report. This area is high on Jim Miller's agenda, and he is looking forward to working on procurement issues.

That concludes my statement, Mr. Chairman.

Mr. SKEEN. Thank you.

[The statement of Mr. Muris follows:]

STATEMENT
OF
TIMOTHY J. MURIS
EXECUTIVE ASSOCIATE DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE OF TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TO DISCUSS THE FISCAL YEAR 1987 APPROPRIATION REQUEST FOR THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP). I AM ACCOMPANIED HERE TODAY BY MR. DAVID BAKER, ACTING ADMINISTRATOR, OFPP, AND MR. WILLIAM MARAIST, ACTING ASSOCIATE ADMINISTRATOR FOR POLICY DEVELOPMENT.

THE PRESIDENT HAS REQUESTED $1,660,000 FOR OFPP IN FY 1987. THIS IS AN INCREASE OF $49,000 FROM THE ENACTED FY 1986 APPROPRIATION. THE INCREASE IS PRIMARILY FOR INCREASES IN OFFICE SPACE COSTS AND SALARIES DUE TO ROUTINE PROMOTIONS AND WITHIN GRADE ACTIONS. IT IS CONSISTENT WITH THE PRESIDENT'S OVERALL EFFORT TO CONTAIN AND REDUCE THE COST OF GOVERNMENT, BUT IS SUFFICIENT TO PERMIT THE OFPP TO FULFILL ITS STATUTORY RESPONSIBILILTIES.

CONCERN FOR REFORMING THE FEDERAL PROCUREMENT PROCESS CONTINUES TO BE A HALLMARK OF THIS ADMINISTRATION. IN 1981, FOLLOWING A CONGRESSIONAL MANDATE, WE SUBMITTED A COMPREHENSIVE PROPOSAL TO CONGRESS FOR A UNIFORM FEDERAL

PROCUREMENT SYSTEM. IN 1982, THE PRESIDENT ISSUED EXECUTIVE ORDER 12352, THE FIRST EXECUTIVE ORDER IN HISTORY TO FOCUS SOLELY ON THE REFORM OF FEDERAL PROCUREMENT PROCESSES. MANY OF THE FEATURES OF THE UNIFORM FEDERAL PROCUREMENT SYSTEM PROPOSAL AND OF THE EXECUTIVE ORDER HAVE NOW BEEN EMBODIED IN THE COMPETITION IN CONTRACTING ACT OF 1984 AND OTHER RECENTLY ENACTED STATUTES. MUCH MORE REMAINS TO BE DONE, HOWEVER.

DURING FY 1987, OFPP WILL CONTINUE TO PRESS FOR GOVERNMENT-WIDE ADOPTION OF THE REMAINING REFORM INITIATIVES CONTAINED IN THE PROCUREMENT SYSTEM PROPOSAL AND IN PRESIDENT REAGAN'S EXECUTIVE ORDER. PROCUREMENT REFORM HAS BEEN FULLY INTEGRATED IN OUR MANAGEMENT AND PRODUCTIVITY IMPROVEMENT PROGRAMS. AS PART OF THE PRODUCTIVITY PROGRAM, SENATOR ROTH HAS RECENTLY INTRODUCED TWO IMPORTANT PROCUREMENT BILLS - S-2007 and S-2008.

S-2007 WILL REVISE OFPP'S CURRENT TESTING AUTHORITY TO PERMIT EASIER TESTING OF VARIOUS PROCUREMENT INNOVATIONS UNDER CONTROLLED CONDITIONS. RESULTS OF THE TESTS WILL BE PROVIDED TO CONGRESS IN THE FORM OF FURTHER LEGISLATIVE PROPOSALS AND RECOMMENDATIONS. S-2008 WILL AUTHORIZE THE IMPLEMENTATION OF THE SIMPLIFIED COMPETITIVE ACQUISITION TECHNIQUE (SCAT). THE SCAT PROCESS WILL PROVIDE AN ALTERNATIVE TO SOLE SOURCING BY REDUCING SOME PROCUREMENT

LEAD TIMES FROM AN AVERAGE OF 224 DAYS TO 75 - 100 DAYS. MANY SOLE SOURCE CONTRACTS ARE, IN PART, CAUSED BY TIME SHORTAGES AND SCAT WILL PROVIDE AN ALTERNATIVE TO SUCH OCCURRENCES. BOTH S-2007 AND S-2008 HAVE CONSIDERABLE PROMISE FOR FURTHER IMPROVING GOVERNMENT PROCUREMENT, AND THEY ARE AN IMPORTANT PART OF OUR FY 1987 PROGRAM.

IN ADDITION TO OUR LEGISLATIVE INITIATIVES, WE ARE COMMITTED TO ENSURING THAT THE DEGREE OF COMPETITION IN PROCUREMENT BE INCREASED; THAT THE PROCUREMENT PROCESS BE FURTHER SIMPLIFIED AND STREAMLINED; THAT THE FEDERAL PROCUREMENT WORKFORCE BE BETTER TRAINED, AND THAT PROCUREMENT REGULATIONS BE FURTHER REDUCED IN NUMBER AND COMPLEXITY. PROCUREMENT REFORM IS HIGH ON JIM MILLER'S AGENDA AND HE WILL BE LOOKING TO OFPP AS THE PRINCIPAL INSTRUMENT FOR ACHIEVING THAT REFORM.

I WOULD BE PLEASED, MR. CHAIRMAN, TO RESPOND TO ANY QUESTIONS YOU OR THE OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

Mr. **Skeen**. I know last year you were directed to conduct a study on the OMB circular A-76. Have you a summary for the committee of the results of that study?

Mr. **Muris**. A couple of years ago OMB changed its organization and A-76 is not the primary responsibility of OFPP.

Mr. **Skeen**. Who has that responsibility?

Mr. **Muris**. It is in the management part on which the director will testify next week.

Mr. **Skeen**. So the person to do is to get Jim Miller?

Mr. **Muris**. He will testify next week. Also, there were hearings on A-76 last December.

Mr. **Skeen**. We have had some impacts in my district on A-76, high-speed test tracks. Here Is a situation where you have an agency or a test facility that has been operated under civil service auspices or some agency of the Federal Government and now we are going to open it up to contracting and they are not even describing the contracts appropriately for what the situation is, and it is causing an awful lot of problems. I will take it up with him.

Mr. **Muris**. We will be glad to look into it. I do not know about the particular situation.

Mr. **Skeen**. What is the biggest problem in Federal procurement?

Mr. **Muris**. It sure is. I have studied what the Packard Commission had to say. Obviously defense procurement is where most of the dollars go. If you look at some of their recommendations, you see a system that has fundamental problems. It is too complex, and one of the biggest problems is instability caused by a lot of factors, including the fact that Congress year after year is not sure how much it wants to fund for weapon systems.

We found that by multi-year contracts and by a system that is more stable you can be more efficient in procuring major weapon systems.

Another problem, one that calls for significant reorganization in the Defense Department, is that you have too much of a division of responsibility in procurement, too many people, too many cross-cutting regulations. The Packard Commission would like to simplify it and create a new deputy secretary who will be a defense acquisition executive, and consolidate the responsibility under him and simplify matters as much as possible.

Thus, both within the Administration and within Congress, there is a lot that could be done in what is the major buyer, the Defense Department.

Mr. **Skeen**. Of course, I have a feeling that since being here in Congress that the problem of procurement starts with the Congress. The minute we get into some kind of a program that requires procurement, we impose on an impossible system of requirements and in discharging those requirements, the way it is interpreted by the various agencies makes it even more difficult because we ask for accountability, ask for timeliness, savings and so forth. In reaching those objectives sometimes I think you have an almost impossible task.

I was curious, to what extent will the Federal acquisition regulation replace the current practice or regulations? Will it or will it not?

Mr. **Muris**. Let me make a few general points and then turn to the experts. The move to get the major buyers—NASA, Defense and GSA to produce one set of regulations was necessary, helpful, and good. One thing people do not understand, however, is that some of the agencies still have to promulgate implementing regulations that are agency specific.

Mr. **Baker**. I would just point out that the Federal Acquisition Regulation is already in existence. It was implemented on April 1, 1984, and in effect, took the place of the Defense Department's procurement regulations as well as, GSA's and NASA's regulations. There was an intent to consolidate those regulations to reduce them in terms of length and to simplify language.

Anytime a law is passed it results in a great deal of regulation. I understand there are some 4,000 statutes that affect procurement policy and the procurement process. That has made development of a Federal Acquisition Regulation difficult.

The major problem we have now is making certain that the agency supplementing regulations are kept within bound. If they continue to proliferate, we are back where we were.

Mr. **Skeen**. So you have been a mechanism to stop that kind of overproliferation?

Mr. **Baker**. We have two councils made up of agency representatives looking at the regulations. In addition, we are providing an oversight function and looking at some of the regulations on a spot basis to see that they are in accordance with the FAR philosophy, which is to not duplicate that which is already in the FAR.

Mr. **Skeen**. Maybe if we had a better Overview of where we could ultimately go with the procurement program that we would relieve ourselves or avoid a lot of real problems, because at the present time I think we have been looking at every little segment of the procurement process, but those of us who stand on the Floor of the House of Representatives holding up the $600 toilet seat should hang it around our own neck because we started the process.

We ask for a lot of things in some statutes without understanding what could ultimately happen under a procurement system. I hope that the Federal Acquisition Regulation would involve some kind of oversight in that area and see where you are going with it.

Also we could take a little lesson here in the legislative area about how do you avoid getting into those problems.

Thank you all very much.

Thank you, Mr. Chairman. Good to see you.

Mr. **Roybal** (presiding). Mr. Wolf?

Mr. **Wolf**. Thank you, Mr. Chairman.

The new Deputy Under Secretary, that would take legislation?

Mr. **Muris**. Yes, sir.

Mr. **Wolf**. Is the Administration sending that up?

Mr. **Muris**. The President last week announced a directive that he had issued. One step will be drafting that legislation, and there are current proposals in the Armed Services Committees of both Houses dealing with reorganization.

Mr. **Wolf**. Wasn't there a recommendation to add a new member to the Joint Chiefs of Staff?

Mr. **Muris**. Yes.

Mr. Wolf. Would that take legislation, too?

Mr. Muris. Yes, as I recall. There would be a new role for the vice chairman and there would be some independence that does not now exist for the chairman, particularly in the relationship with the various commanders in chief—the so-called CINCs—around the world. The Packard Commission felt that by those reforms we could help get one of the reforms that they really want, which is longer-range thinking in terms of defense procurement to have stability.

Time and time again people have made the point before and during the Packard Commission that start-stop in defense procurement—where you really do not know over the course of three or four years exactly what and how much you are going to spend and how much you are going to buy—has added to defense costs. We found that multi-year procurement of major weapons systems has significantly lowered unit costs.

One of the recommendations of the commission we hope gets adopted as well is moving to a two-year budget for defense. The idea of stability and longer range planning is important.

Mr. Wolf. What percentage can be done by executive order and what percentage by legislation roughly?

Mr. Muris. I do not know in terms of percentage. Of course, it depends on how you weigh it. Quite a bit will require legislation and a lot that can be implemented just within the Administration will require some changes in Congress to be effective. For example, there is a requirement that within general fiscal guidance from the White House there be a five-year provisional defense plan. For that plan to be an effective document upon which the services can plan will require Congress in essence agreeing to have long-range stability. The plan could be done by the executive branch, and theoretically it could be done just there. But to be effective it would require Congress as well.

Mr. Wolf. What has been the reaction of the Department of Defense to the Packard Commission report?

Mr. Muris. There were a lot of discussions during the drafting of the Packard Commission report. The Defense Department has endorsed it.

Mr. Wolf. I know that, but what has been the active duty military's reaction?

Mr. Muris. I have not talked to a many such people. I have been in some meetings, and I think they feel that anything that would lead to a situation that would alleviate some of the start-stop in procurement and would bring more stability would be something they would support.

Mr. Wolf. Have there been other Packard Commissions over the years?

Mr. Muris. I am pretty sure there have. I do not know the details.

Mr. Wolf. The reason I asked that, I was going to ask how successful have they been. It seems to make a lot of sense. Once you get a commission, then you have to put it into practice and I wondered if there have been other commissions in the past that have come out with recommendations but have never been put into practice.

Mr. **Muris**. I do not know for sure. In this Administration there has been a track record of using the commission device and following through on the recommendations of the commission. The President is committed to implementing the Packard recommendations.

Mr. **Wolf**. As you know, sometimes when the President wants something it doesn't filter down—I worked in an agency for five years and sometimes the secretary doesn't know what is going on downstairs.

In the procurement business there is a saying that if a savings come via a Federal employee that the savings be given to the Federal employee as a bonus?

Mr. **Muris**. I think proposals like that have been made.

Mr. **Mariast**. Other than the suggestion program, no, not that we are aware of. There is a sharing of savings through the suggestion program. There have been procurement suggestions that have been approved and there have been awards.

Mr. **Wolf**. What is the largest award?

Mr. **Mariast**. I have no idea.

Mr. **Wolf**. Could you maybe supply that for the record, please.

[The information to be furnished follows:]

Data received from the Office of Personnel Management (OPM) indicates that the largest procurement related award made in FY 1985 was $22,200. This award was made to 23 employees in the Department of Agriculture for their efforts in improving the procurement and implementation of the "Forest Level Information Processing System." The OPM is responsible for administering the Government-wide employee suggestion program.

Mr. **Wolf**. No more questions, Mr. Chairman. Thank you very much.

Mr. **Roybal**. Thank you, Mr. Wolf.

I notice from your budgetary request that you are in fact requesting an increase in 1987 above fiscal year 1986 of $118,000. Is that due to some problem in Federal procurement? What is the reason for it?

Mr. **Muris**. I am told our increase is smaller. Overall it is $49,000 and it is primarily a function of two things. It is a function of increased standard level user charges and it is a function of some small within grade and other routine promotions.

Mr. **Roybal**. Does the $118,000 take into account the Gramm-Rudman cuts?

Mr. **Muris**. I am not sure what base the $118,000 comes from.

Mr. **Smith**. It is an increase above the revised 1986 taking into account the Gramm-Rudman reduction.

Mr. **Muris**. Are you asking if it is from the addition of the sequester level. I went over this with the staff yesterday—maybe I am wrong—but I was told that the 49 was from post-Gramm-Rudman, but I will be glad to look into that and get back to you.

[The information follows:]

The FY 87 request, pre-Gramm-Rudman, represents an increase of $49,000 over our FY 86 request. The post-Gramm-Rudman increase is $118,000. As noted above, the additional funds are needed to cover increased personnel costs—primarily due to promotions and routine within grade actions—and office space costs.

Mr. **Roybal**. I would like to thank you and your colleagues for your testimony this afternoon.

Mr. **Muris**. Thank you, Mr. Chairman.

[The justifications follow:]

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

Justification of Estimates

for the 1987

Appropriations Request

PREPARED FOR THE COMMITTEE ON APPROPRIATONS

APPROPRIATIONS LANGUAGE

1987 Regular Appropriations

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

SALARIES AND EXPENSES

For expenses necessary for the Office of Federal Procurement Policy including services as authorized by 5 U.S.C. 3109, $1,660,000.

SUMMARY TABLES

Budget Overview
(in thousands of dollars)

	1985	1986	1987
Budget Authority	1630	1611	1660
Obligations	1542	1611	1660
Outlays	1490	1628	1660

Personnel Overview

	1985	1986	1987
Full-Time Equivalent Positions	25	25	25

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

	1985 actual	1986 est	1987 est
Program by activities:			
Procurement Policy	1542	1611	1660
Financing:			
Unobligated balance lapsing	88	---	---
Budget authority (appropriation)	1630	1611	1660
Relation of obligations to outlays:			
Obligations incurred, net	1542	1611	1660
Obligated balance, start of year	182	124	107
Obligated balance, end of year	-124	-107	-107
Adjustments in expired accounts	-110	---	---
Outlays	1490	1628	1660

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

SALARIES AND EXPENSES (Continued)

Object Classification (in thousands of dollars)

	1985 actual	1986 est	1987 est
Personnel compensation:			
Full-time	911	1050	1089
Other than full-time permanent	57	12	12
Other personnel compensation	20	1	1
Special personal service payments	2	5	4
Total personnel compensation:	990	1068	1106
Personnel benefits: Civilian	95	108	108
Travel and transportation of persons	14	25	22
Standard level user charges	221	201	222
Communications, utilities, and other rent	78	78	78
Printing and reproduction	22	22	16
Other services	93	90	88
Supplies and materials	9	14	14
Equipment	20	5	6
Total obligations	1542	1611	1660

COST JUSTIFICATION BY OBJECT CLASS

Personnel Compensation (Object Classification 11), $1,106,000

This 1987 request represents an increase of $38,000 from the FY 86 estimate. The increase is due to normal promotion and within-grade increases for the OFPP staff.

Summary of Personnel Costs
(in thousands of dollars)

	1985	1986	1987
Permanent Personnel Costs	$ 911	$1,050	$1,089
Non-Permanent Personnel Costs	57	$ 12	$ 12
Overtime and Other Personnel Costs	$ 22	$ 6	$ 5
	$ 990	$1,068	$1,106

Personnel Benefits (Object Classification 12), $108,000

This request is for OFPP's mandatory contributions to the Civil Service Retirement System, the Social Security Retirement and Medicare programs, the Federal Group Life Insurance program and the Federal Employees Health program. It represents a slight reduction from FY 86.

Travel and Transportation of Person (Object Classification 21), $22,000

This request is to provide travel funds for official business travel performed by OFPP. It represents a 12% reduction in travel expenses estimated for FY 86.

Standard Level User Charges (Object Classification 23.1), $222,000

This estimate represents payments made to the General Services Administration (GSA) for rental of office space in the New and Old Executive Office Buildings. The rates used are those mandated by GSA for space currently occupied. The increase of $21,000 over FY 86 is due to the assignment of office space for the Administrator in the Old Executive Office Building to permit better coordination of OMB/OFPP activities.

Communications, Utilities and Other Rents (Object Classification 23.3), $78,000

This estimate - which is unchanged from FY 86 - includes payment for the cost of operating the Executive Office joint telephone switchboard, including salaries of telephone operators, use of telephone equipment and telephone service. Also included in this estimate are costs associated with (1) rental of duplicating, word processing, and other equipment; (2) reimbursement to GSA for furnishing after-hour utilities, and for telephone and postage costs.

Printing and Reproduction (Object Classification 24), $16,000

This request covers the cost of publishing in the Federal Register; work done by the Government Printing Office (GPO), and other work which, because of size, urgency or complexity, cannot be handled by the Office of Administration's duplicating facilities. It represents a reduction of $6,000 from FY 86.

Other Services (Object Classification 25), $88,000

This request, includes charges for (1) computer time-sharing, (2) personnel security investigations conducted by the Office of Personnel Management, (3) the OFPP share of maintaining an employee health program, (4) repairs to equipment, (5) training, and (6) other miscellaneous services. It represents a reduction of $2,000 from FY 86.

Supplies and Materials (Object Classification 26), $14,000

This estimate - which is unchanged from FY 86 - is for the purchase of normal office supplies and additional work materials.

Equipment (Object Classification 31), $6,000

This request covers purchase of office equipment, including adding machines, calculators, typewriters, and ADP equipment. These funds will be used to replace older, used machines, the replacement of which has been deferred over the past three years.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

Summary of Increases and Decreases from 1986 to 1987

(In thousands of dollars by object classification)

Fiscal Year 1986 Base		1611
Increases:		
Personnel Compensation	+ 38	
Standard Level User Charge	+ 21	
Equipment	+ 1	
		+ 60
Decreases:		
Travel	- 3	
Printing	- 6	
Other Services	- 2	
		- 11
No Change:		
Personnel Benefits	0	
Communications and Utilities	0	
Supplies	0	
		0
		+ 49
Fiscal Year 1987 Base		1660

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

Personnel Summary

	1985 actual	1986 est	1987 est
Total number of full-time permanent positions	25	25	25
Total compensable workyears			
Full-time equivalent of overtime	25	25	25
Full-time equivalent of overtime and holiday hours	0	0	0
Average ES salary	$65,529	$68,386	67,877
Average GS grade	12.00	11.82	11.73
Average GS salary	$40,076	$42,447	43,028

NOTE: No funds were utilized for consultants in FY 85 nor are any expected to be used for this purpose in FY 86 or FY 87.

EXECUTIVE OFFICE OF
THE PRESIDENT
OFFICE OF MANAGEMENT
AND BUDGET

MANAGEMENT
OF THE
UNITED STATES
GOVERNMENT

OFFICE OF FEDERAL PROCUREMENT POLICY

FISCAL YEAR

1987

Part 5

STATUS REPORT ON FEDERAL PROCUREMENT

This administration's efforts to reform Federal procurement are led by The Office of Management and Budget's (OMBs) Office of Federal Procurement Policy (OFPP). In prior years, OFPP, pursuant to Section 8(a) of the Office of Federal Procurement Policy Act, provided a separate report directly to Congress on its annual activities. This year, OFPP's activities are being included as an integral part of this report. This will provide Congress with a single document on management improvements and will also help reduce publication costs.

Concern for reforming the Federal procurement process has been a hallmark of the current administration. In 1981, the administration initiated an exhaustive review of procurement and proposed a Uniform Federal Procurement System to Congress. In 1982, the President issued Executive Order 12352, the first Executive Order in history to focus solely on the reform of Federal procurement processes. In 1985, the administration continued to demonstrate its reform commitment by its proposal for a simplified competitive acquisition technique (SCAT). Other activities initiated or carried forward during 1985 have also been significant. They include:

- Ongoing procurement reform program achievements;
- Further implementation of the Federal Acquisition Regulations system;
- Further implementation of the recommendations of the Commission on Government Procurement; and
- Conduct of a congressionally required study on qualifying additional subcontractor sources of supply.

A. FEDERAL PROCUREMENT REFORM

After a year-long developmental effort, the administration submitted on February 26, 1982, a proposal to Congress for a Uniform Federal Procurement System (UFPS), which included a procurement management system and an outline of the legislative changes that would be required to implement the new system. Rather than await congressional action, those initiatives that could be implemented without additional legislation were incorporated in Executive Order 12352, "Federal Procurement Reforms," issued on March 17, 1982. For the last 4 years, this Executive Order has been the focus of Government efforts to reform the Federal procurement system.

To assist in the planning and oversight activity necessary to implement Executive Order 12352, OFPP established in 1982 the Executive Committee on Federal Procurement Reforms. Comprised of representatives of the eight largest procuring agencies as well as the Small Business Administration and the Office of Personnel Management, the Executive Committee is chaired by the Administrator for Federal Procurement Policy. The initial focus of the Executive Committee was on the agency senior procurement executive, a position required by Executive Order 12352. A model charter was developed setting out the primary duties and responsibilities of the senior procurement executive; and, in July 1982, the Director of the Office of Management and Budget instructed each department and agency to designate a senior procurement executive using the model charter as a guide. Today, 50 departments and agencies have senior procurement executives overseeing the procurement activities of their respective agencies.

A second activity of the committee was the promulgation of criteria for enhancing competition and for evaluating agencies' existing procurement systems. By September 1985, 11 of the 50 department and agency procurement executives had certified their procurement systems to their agency heads as being in conformance with the system certification guidelines.

In October 1985, the Executive Committee's final consolidated guidelines on various facets of the procurement career management program were issued. The implementation of these guidelines are being directed by the Federal Acquisition Institute (FAI), executive agent for OFPP in matters of procurement workforce improvement and of procurement research. The FAI is currently conducting career management workshops to provide agency procurement and personnel managers with an understanding of procurement career management programs. To complement the FAI's effort, the Office of Personnel Management (OPM) has developed a new Governmentwide competitive recruitment examination for entry into the GS-1102 contracting series. This examination is comprised of a written test of abilities and job knowledge, as well as a structured interview to test an applicant's personal skills and negotiating abilities. OPM distributed the examination announcement in November 1984 and will collect applications in January 1986, the written test will be administered in February, and OPM will establish the registers in May.

As an added incentive for agencies to implement the administration's procurement reforms as required by E.O. 12352, 10 specific initiatives were incorporated in OMB's 1987 management review process. Working closely with the budget and management divisions of OMB, OFPP staff participated in the management review hearings with the 20 largest procurement agencies. Several agencies were found to be making excellent progress in all aspects of the procurement reform program, including increased rates of competition, timely certification of internal procurement systems, and implementation of the Federal Acquisition Regulations system. Several other agencies agreed to speed up their implementation of specific E.O. 12352 initiatives. All of the affected agencies provided milestones which will be used by OFPP in future years to assess the agencies' progress.

B. SIMPLIFIED COMPETITIVE ACQUISITION TECHNIQUE

The Current Situation

On September 25, 1985, the administration submitted proposed legislation to Congress to establish a simplified competitive acquisition technique. The SCAT proposal was developed by an interagency task group led by OFPP. The task group, representing seven agencies, was made up of individuals involved in day-to-day procurement operations. The proposal is intended to correct three basic problems associated with the present acquisition process:

Acquisitions Take Too Long.—The acquisition process is so complex that product and service users sometimes do not get what they need when they need it. While the time required to process a specific acquisition varies with the procedures used and the type of product or service required, administrative lead-times of 27-37 weeks are not uncommon for competitively negotiated acquisitions in the $25,000 - $5 million range. Such long lead-times add to the uncertainty, risk, and expense of contracts and contribute to delay, expense and reduced productivity in agency programs.

Too Many Acquisitions Are NonCompetitive.—Noncompetitive acquisitions are usually faster but often more expensive than competitive actions. As a result, if a product or service is needed in less than the normal lead-time of 27-37 weeks, the acquiring agency often decides to sacrifice competition, and thus frequently adds to the expense, to obtain timely delivery. (It is estimated that noncompetitive acquisitions are 25% more expensive than those which are subjected to competition.) Over 53% of the 1984 contract outlays ($96 billion out of $182 billion) were awarded on a noncompetitive basis. There are over 200,000 annual contract actions in the category at which SCAT is aimed. In 1984, $28 billion worth of contracts in this category was awarded on a sole source basis. While time was not the only factor contributing to this large percentage of noncompetitive awards, it was a major factor.

Authorities and Responsibilities Are Fragmented.—Over the years, the authorities and responsibilities of the Government's contracting officers have been eroded. To a large extent, these authorities and responsibilities have been weakened by excessive or duplicative management reviews and approvals. In many organizations, the delegation of acquisition authority and responsibility is not clear, and there is sometimes a lack of accountability for results. In addition to savings achieved through increased competition, it is anticipated that use of SCAT will increase the productivity of agency acquisition officers by providing for a more efficient method of issuing contracts. Use of SCAT procedures will reduce the administrative effort and cost of an acquisition by more than 50% when compared to traditional competitively negotiated acquisitions.

The SCAT Process

The SCAT legislative proposal changes the thrust of present procurement management practices away from the acquisition process to focus on end results. It is not designed for all acquisitions. Instead, it is intended for selected acquisitions of supplies and services costing between $25,000 and $5 million where competitive negotiations are used.

SCAT, when enacted, will offer a viable alternative for agencies when time is of the essence and still enable them to reap the reduced price benefits of competition. The system places strengthened authority and responsibility with contracting officers and also makes substantial changes in the review and approval process.

The SCAT process will shorten the acquisition cycle to 10-12 weeks. If longer lead-times are needed to achieve specific objectives, the normal 27-to-37 week cycle will be followed. SCAT will save time primarily by simplifying the evaluation-source selection process—a process which now consumes approximately 150 days of the normal 224-day lead-time. This shortened process is administratively controllable, and under SCAT, the average lead-time for evaluation-source selection will be reduced to approximately 30 days.

SCAT also sets stringent limits on the length of documents and process steps. For example, requests for proposals will be limited to 25 pages, whereas they now often exceed 100. Technical proposals will not be allowed to exceed 20 pages, whereas they now often reach 250 pages.

Under SCAT, discussions will be held only with the top firms, and those discussions must be completed in 1 week. SCAT contract awards will be made based on the "best value to the Government" concept. If a preaward survey is required, it will be conducted concurrently with the source selection process. Conversely, preaward audits will not be performed under the SCAT procedures.

If the contracting officer determines that an audit is required, it will be performed on a postaward basis.

The SCAT proposal is one of 18 pieces of management-related legislation that comprise the administration's 1985 management improvement package, many of which are discussed in the preceding part of this report. Hearings on the SCAT proposal are expected early in the 1986 legislative session. Meanwhile, agencies will be encouraged to adopt and implement those features of SCAT that can be accomplished administratively and that do not require legislative changes.

C. FEDERAL ACQUISITION REGULATIONS SYSTEM

Public Law 93-400 required that the OFPP Administrator develop a system of simplified and uniform procurement policies, regulations, procedures and forms. In response to that requirement, the Office of Federal Procurement Policy initiated the Federal Acquisition Regulation (FAR) project in January 1978 and provided policy oversight and assistance throughout its development. The Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA)—the three agencies with sole statutory authority at that time to issue procurement regulations—provided most of the resources for the FAR system development and have issued the FAR jointly under their respective statutory authorities. FAR was published in the Federal Register on September 19, 1983, and became effective on April 1, 1984. The FAR system is maintained jointly by DOD and NASA through the Defense Acquisition Regulatory Council. The civilian agencies are represented through the Civilian Agency Acquisition Council, chaired by GSA.

The purpose of the FAR system is to reduce redundancy and regulatory proliferation. The FAR system provides that agency implementing regulations must not conflict with, restate, or paraphrase the FAR; must conform to its numbering system; and also must be published in Title 48 of the Code of Regulations. The FAR consolidates Governmentwide procurement regulations into a single, simplified and understandable regulation, reduces the proliferation of regulations among and within agencies, and makes it easier to do business with the Government, particularly for small and minority-owned firms.

The OFPP Act Amendments of 1983 (P.L. 98-191) established the regulatory authority of the Administrator with respect to the FAR. It provides that the Administrator may issue regulations if DOD, GSA, and NASA are unable to agree on or fail to issue Governmentwide regulations in a timely manner. A draft policy letter providing for the exercise of this authority was published in the Federal Register for comment on July 6, 1984. A substantial number of private sector and agency comments were received and evaluated by OFPP through early 1985. OFPP Policy Letter 85-1, issued on August 19, 1985, establishes policies and procedures by which OFPP's FAR responsibility will be accomplished. It provides for submission of information on the FAR system maintenance to OFPP from the two FAR Councils and from each executive agency. It details the steps to be taken for OFPP resolution of differences between the three regulatory agencies. The policy letter also provides procedures by which OFPP will give prior notice to the agencies regarding timeliness of regulations before OFPP exercises its authority to issue regulations.

D. STATUS OF THE COMMISSION ON GOVERNMENT PROCUREMENT RECOMMENDATIONS

The Commission on Government Procurement (COGP) proposed 149 specific recommendations in 1972 for improving Federal procurement, including establishment of OFPP. One of OFPP's basic responsibilities since its inception in 1975 has been to oversee the review and proper disposition of these recommendations. At the time of OFPP's last report to Congress on December 31, 1984, 21 recommendations remained to be completed. Since that time, two recommendations have been completed, while 19 are still in progress. The table below provides a summary, by subject category, of all 149 recommendations.

SUMMARY STATUS OF COGP RECOMMENDATIONS

Procurement topic	Total recommendations	Number completed	Number in process	Number found to be impractical
1. General procurement	49	41	3	5
2. Acquisition of research and development	12	10	1	1
3. Acquisition of major systems	12	12		
4. Acquisition of commercial products	19	15		4
5. Acquisition of construction and architect and engineer services	4			4
6. Federal grant and assistance programs	2	2		
7. Legal and administrative remedies	24	18	3	3
8. Government property and catastrophic accidents	5	3	2	
9. Patents technical data and copyrights	16	5	10	1
10. Other statutory considerations	6	2		4
Totals	149	108	9	22

E. CONGRESSIONAL STUDY: QUALIFYING ADDITIONAL SOURCES

Section 503 of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98-577) required the

Administrator for Federal Procurement Policy to submit a report to Congress, not later than July 1, 1984, on:

> . . . the desirability and feasibility of various methods that may be used to qualify competitive sources for subsystems, assemblies, and components acquired as part of a major system established by an agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled "Major Systems Acquisitions" and likely to be reprocured in substantial quantities during the system's service life. Such report shall discuss the desirability and feasibility of a contractual requirement that, in those situations where a prime contractor qualifies its subcontractors and suppliers, the prime contractor be required to:
>
> 1. Qualify at least two sources for each major subsystem, assembly, or component during the term of the contract; or
>
> 2. Furnish to the United States, as a deliverable item under the contract, the qualification standards and processes employed by the prime contractor, so as to permit the United States to qualify additional sources for future competitive procurements.

To assist in preparing the required study report, OFPP convened an interagency group of representatives from the Departments of Defense, Energy, and Transportation, and from the General Services, Small Business, and National Aeronautics and Space Administrations. The interagency group identified and reviewed prior studies, publications, and other existing materials relating to the techniques of qualifying multiple sources.

A Federal Register notice (50 FR 5331) was issued to publicize the study and a public meeting was held in March 1985. Other meetings and discussions were held with agency contracting and program management personnel, prime contractors, small businesses, industry associations, and experts in qualification procedures.

The report resulting from the study group's effort was submitted to Congress on July 1, 1985, and concluded that mandating additional qualification of sources by major system contractors or the acquisition of the contractors' qualification data was not appropriate. Instead, the report recommended that qualification and the acquisition of qualification data be decided on a selective basis. The report stated that agencies should require the qualification of second sources when it is anticipated that such action would produce a net benefit to the Government over and above the costs and risks incurred in qualifying the additional sources. Similarly, agencies should acquire contractors' qualification data and processes when the overall benefits to be derived from the data exceed their acquisition costs.

F. ONGOING POLICY INITIATIVES

In addition to the major programs summarized above, OFPP worked to develop and improve procurement policies and programs in many other specific areas. These initiatives and responsibilities were assigned by the Office of Federal Procurement Policy Act, as amended, or by other laws and directives. Major developments in several of these areas during 1985 are described below.

Testing Innovative Procurement Methods

Section 15 of the OFPP Act, as amended, authorizes the Administrator to develop innovative procurement methods to be tested by selected executive agencies. The test programs must be approved by the heads of the agencies selected to carry out such tests. In addition, if any program requires a waiver of any statutory requirements, the Administrator must request congressional action to waive the statute's application. In April 1984, OFPP solicited agency suggestions for test programs and received 41 suggestions. Those suggestions and the steps for developing test plans were discussed in August and September at meetings of the Federal Procurement Council and the Executive Committee on Federal Procurement Reforms.

In September 1984, the Civilian Agency Acquisition Research Council (CAARC), chaired by the General Services Administration, began drafting a test plan to simplify small purchases. The test would examine the savings and effects of raising the thresholds for certain statutory requirements to $25,000, to coincide with small purchase limitations. Those requirements include wage determinations under the Davis-Bacon and Service Contract Acts and synopsis of contract opportunities in the Commerce Business Daily. The Department of Defense, which is also interested in this test, is working with GSA, NASA, and the CAARC to finalize the plan.

DOD also has another test plan. This second plan would test electronic requisitioning, ordering, and obligating under indefinite delivery-type contracts at the Defense General Supply Center. The test would replace internal and external hard copy documents for recording each transaction by an auditable, automated system.

The request for statutory waivers to conduct the above test was submitted to Congress on December 4, 1985. Upon congressional approval, an interagency group will convene to finalize the test design, implement the test, monitor results, and ultimately report to Congress.

During 1985, OFPP also continued to screen for feasibility and potential the remaining suggestions for other tests submitted by the executive agencies. Some have been incorporated in pending legislative proposals such as civilian multi-year procurement and a simplified competitive acquisition technique.

Procurement Automation Program

In January 1985, the Office of Federal Procurement Policy obtained the concurrence of the Executive Committee on Federal Procurement Reforms to develop a Governmentwide procurement automation program. The purpose of the program is to promote and implement cost-effective automation technology throughout the Federal procurement community and to reduce interagency and intra-agency duplication of procurement automation efforts. The major objectives of this effort are to:

- Ensure that the design, development, implementation and maintenance of automated procurement systems and subsystems are transportable, generic, and usable by more than a single agency; and
- Ensure that these systems and subsystems are compatible with related systems such as finance, accounting, inventory, acquisition information and programmatic systems.

In support of these objectives, the following actions have been initiated:

- All Federal procurement agencies were provided survey forms to identify each of their existing and proposed automated procurement systems. Initial review of the returns disclosed the existence of over 200 separate systems. These systems are being analyzed to identify duplication and potential adaptation for use by more than a single agency. The Executive Committee for Federal Procurement Reforms approved the automation of this survey to support additional evaluations and the preparation and distribution of these data to Government agencies and industry.
- The Executive Committee for Federal Procurement Reforms approved support of an enhanced procurement automated source system, to be developed by the Small Business Administration. This enhancement will accommodate large and small businesses, State and local governments and universities, as well as additional data items such as debarment-suspension list information, annual certifications and representations, and extended product/service codes.

In addition, automation of the suspended and debarred contractors list, maintained by the General Services Administration, was approved as an interim step to incorporating these data into the enhanced procurement automated source system. Future procurement automation possibilities include automation of the Federal Acquisition Regulation and of the *Commerce Business Daily.*

Federal Procurement Data System

One of OFPP's statutory responsibilities is to establish a computer-based information system for collecting, developing, and disseminating procurement data. The system was developed in coordination with an interagency Federal Procurement Data System (FPDS) Policy Advisory Board and activated at the beginning of 1979. The Federal Procurement Data Center, which is operated by the General Services Administration, now produces a standard quarterly and annual report which encompasses all Federal procurement actions. OFPP continues to chair the FPDS Policy Advisory Board and to work with executive agencies and the Federal Procurement Data Center to refine and improve the system. The data system was modified in April 1985 to incorporate the reporting requirements imposed by Public Law 98-369, the Competition in Contracting Act of 1984. In August 1985, OFPP initiated a comprehensive review of the data system to improve its overall structure, content, and responsiveness to the needs of Congress, executive agencies and the private sector. On October 24, 1985, OFPP raised the threshold for civil agencies' reporting of individual contract actions from $10,000 to the simplified small purchase threshold of $25,000. With this change, the reporting thresholds are made uniform between the civil and defense agencies.

Imprest Fund Ceiling for Small Transactions

OFPP successfully established a new threshold under the Department of the Treasury regulations for the use of imprest funds. Originating in the administration's proposal for a Uniform Federal Procurement System, this initiative was recommended by an interagency task group in its report on simplifying small purchases. The task group suggested an increase to $500 for all imprest fund transactions. The Treasury Department concurred in this threshold change, the first change since 1974, which will be reflected in Subsection 13.404 of the Federal Acquisition Regulation. This initiative will reduce administrative costs, streamline small purchase procedures, and facilitate other simplified purchase procedures. It will also aid timely responses to Government small supply and service requirements that are needed on a "cash on delivery" basis.

Procurement of Audiovisual Products and Services

A revised edition of OMB Circular A-114, "Management of Federal Audiovisual Activities," was issued on March 20, 1985. The revised circular updates and simplifies the 1978 circular. Concern about Federal audiovisual management policies has persisted over the last decade. The main issue continues to center around the "inhouse production" of films and tapes. The revised circular requires that agencies and departments first consider using existing productions (both Government and privately owned) before making new productions. A formal control system, which requires a preproduction approval by a supervisory office, is required by the new circular; explicit conformance with OMB Circular A-76 is also required. At the end of 1985, the General Accounting Office was auditing departmental and agency compliance with the new circular at field activities of six departments and agencies—the Departments of Defense, Treasury, Transportation, and Health and Human Services, as well as the Veterans Administration and the United States Information Agency.

Major Systems Acquisition Policy

Agency implementation of OMB Circular No A-109, "Major Systems Acquisitions," continues to be monitored by OFPP. In early 1985, OFPP completed a survey of agency Procurement Executives which requested comments on the circular. The responses to this survey indicated a lack of consistency in interpretation and implementation by the civilian agencies, particularly with regard to: thresholds for designating major systems, the role of the acquisition executive in reviewing programs at key decision points, and use of this process for nondevelopmental items. Recent observations by the GAO and agency Inspectors General have revealed the same lack of evenness in policy application.

Enactment of Public Laws 98-525 and 98-577 revised the definition of a major system and established new dollar thresholds for both civilian and defense agencies for designating a major system. These changes have been implemented in the Federal Acquisition Regulation. In light of this evidence of the need for an updated circular, an internal review was initiated. OFPP plans to refine the circular and establish a forum to receive Government, public, and industry comments. This effort should promote uniform and effective management of major system acquisitions by all elements of the executive branch.

Competition Advocates

The Competition in Contracting Act of 1984 (Public Law 98-369) required that the heads of each executive agency designate for the agency and for each procuring activity of the agency an officer or employee to serve as the advocate for competition. The Act assigns certain responsibilities to the advocate for competition including review of the agency's procurement activities, challenging barriers to and promoting full and open competition, and recommending to the senior procurement executive a system of personal and organizational accountability for competition. The Act also requires that each executive agency head submit a report to the Congress by January 31, 1986, containing a specific description of all actions that the agency head intends to take to increase competition and reduce the number and dollar value of noncompetitive contracts. In the belief that the competition advocates would profit by sharing their experiences and plans, OFPP initiated a series of meetings with all agencywide competition advocates. As a result of these meetings—4 of which were held in calendar year 1985—the need for OFPP guidance concerning uniform criteria for the report to the Congress became apparent. Proposed OFPP guidelines were drafted in coordination with a subcommittee of the competition advocates and sent to the agencies for comment. Final OFPP guidance was provided to the agencies on December 9, 1985.

Voluntary Standards

OMB Circular No. A-119, "Federal Participation in the Development and the Use of Voluntary Standards," was rewritten by OFPP in 1982. As an adjunct to the Office's commercial products policy, the circular provides guidance to Federal agencies on increasing: 1) Government use of private sector standards for procurement and other purposes, 2) Government participation with private sector groups in the development of such standards, and 3) cooperation among Federal agencies in standards development. In October 1985, the Interagency Committee on Standards Policy, chaired by the National Bureau of Standards and consisting of representatives from 26 agencies, developed a report that was provided to OMB by the Secretary of Commerce on the status of agency implementation of the circular. No recommendations for changing the circular were made. The report will be used during the internal OMB staff review of agency implementation of the standards policy during the 1987 management review process.

TUESDAY, APRIL 8, 1986.

FISCAL YEAR 1987 BUDGET FOR THE OFFICIAL RESIDENCE OF THE VICE PRESIDENT

WITNESSES

CAPTAIN THOMAS J. BARNETT, U.S. NAVY, ASSISTANT DIRECTOR, OFFICE OF BUDGET AND REPORTS

LIEUTENANT COMMANDER JOSEPH LOFASO

Mr. ROYBAL. The committee will now hear from Captain Thomas Barnett with regard to the official residence of the Vice President. Please proceed in any manner that you may desire.

OPENING STATEMENT

Captain BARNETT. It is my pleasure to appear before this committee to present the Department of the Navy's Fiscal Year 1987 budget request for the appropriation, Official Residence of the Vice President.

The request for Fiscal Year 1987 is $211,000, which is $7,000 greater than the amount reflected in the request for Fiscal Year 1986. The incremental change from Fiscal Year 1986 is composed of an increase of $2,000 in support of ongoing efforts to repair and replaster interior walls and upgrade associated electrical wiring and an increase of $5,000 for increased costs of utilities and other services.

The repair, rewiring and replastering of interior walls is a continuing project which will be accomplished over an extended period. This job could be completed in several months, but would result in considerable inconvenience and disruption while the residence was essentially uninhabitable.

I was in the residence last week and had the pleasure of meeting Mrs. Bush. She was very complimentary toward the job the Navy is doing

I will be happy to answer any of your questions.

Mr. ROYBAL. Thank you, Captain.

[The details of the budget follow:]

DEPARTMENT OF THE NAVY
JUSTIFICATION OF ESTIMATES
FOR FISCAL YEAR 1987

SUBMITTED TO CONGRESS FEBRUARY 1986

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICIAL RESIDENCE OF THE VICE PRESIDENT

For the care, maintenance, repair, and alteration, furnishing, improvements, heating and lighting, including electric power and fixtures, of the official residence of the Vice President, and not to exceed $60,000 for official entertainment expenses of the Vice President, to be accounted for solely on his certificate; $211,000: Provided, That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

Note. - A regular 1986 appropriation for this account had not been enacted at the time this budget was prepared. A continuing resolution (Public Law 99-190) provides funds to the extent and in the manner provided for in the conference version of H.R. 3036, Treasury, Postal Service and General Government Appropriations Act, 1986, as amended by P.L. 99-190.

DEPARTMENT OF THE NAVY
OFFICIAL RESIDENCE OF THE VICE PRESIDENT
Program and Financing (In Thousands of Dollars)

Identification Code 11-0211-0-1-802

		FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate
	Program by Activities:			
	Direct Program			
10.	Support of the Official Residence of the Vice President	219	204	211
40.	Budget Authority (Appropriation)	219	204	211
	Relation of Obligations to Outlays:			
71.	Obligations Incurred, Net	219	204	211
72.	Obligated Balance, Start of Year	95	269	88
74.	Obligated Balance, End of Year	-269	-88	-72
90.	Outlays	46	385	227

DEPARTMENT OF THE NAVY
OFFICIAL RESIDENCE OF THE VICE PRESIDENT
Object Classification (In Thousands of Dollars)

Identification Code 11-0211-0-1-802

	FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate
Direct Obligations:			
25.0 Other Services	46	385	227

DEPARTMENT OF THE NAVY
OFFICIAL RESIDENCE OF THE VICE PRESIDENT
Summary of Budget Authority and Outlays

Identification Code 11-0211-0-1-802

	FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate
Enacted/Requested:			
Budget Authority	219	204	211
Outlays	46	385	227
Reduction Pursuant to P.L1 99-177:			
Budget Authority	-	-9	-
Outlays	-	-5	-4
Total:			
Budget Authority	219	195	211
Outlays	46	380	223

DEPARTMENT OF THE NAVY

Operating Expenses, Official Residence of the Vice President

(In Thousands)
FY 1987 Estimate - $211
FY 1986 Estimate - $204
FY 1985 Actual - $219

Purpose and Scope of Work

These funds provide for purchase, lease, and operation of appropriate equipment, furnishings, improvements, alterations, maintenance, repairs, services, and other provisions as may be required under the supervision of the Vice President to enable him to perform and discharge appropriately the duties, functions, and obligations associated with his office. These estimates also include official entertainment expenses of the Vice President.

Justification of Funds

The fiscal year 1987 request of $211 thousand will provide for the continuous day-to-day habitability, up-keep, and operational services of the Vice Presidential residence. The incremental change of resources required between FY 1987 and FY 1986 is composed of: an increase of $5 thousand for price growth in utilities and other services and an increase of $2 thousand for continuing efforts to repair and replaster interior walls and upgrade associated electrical wiring.

DEPARTMENT OF THE NAVY
OPERATING EXPENSES, OFFICIAL RESIDENCE OF THE VICE PRESIDENT

The following table reflects the amounts being requested by function:

	FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate
Utilities	$30.4	$31.7	$33.0
Other Services			
Maintenance of Residence	29.6	30.8	32.2
Rehabilitation & Alterations	11.5	12.0	12.6
Supplies	6.9	7.2	7.6
Furnishings	6.8	7.1	7.5
Vehicle Lease	2.5	2.6	2.8
General Administration	6.3	6.6	6.9
Services	4.9	5.1	5.4
Equipment Maintenance	2.8	2.9	3.0
Official Entertainment	60.0	60.0	60.0
Replaster/Repair Interior Walls Upgrade Associated Wiring	-	38.0	40.0
Repair/Replace Boiler and Steam System	12.0	-	-
Replace Metal Garage Roof	12.0	-	-
Replace Basement Floor Tile	9.3	-	-
Install Sewer Manhole	4.0	-	-
Conduct Comprehensive Engineering Study	20.0	-	-
Total	$219.0	$204.0	$211.0

CONDITION OF RESIDENCE

Mr. **Roybal**. As I recall, the Committee has often funded special maintenance tasks with regard to the Vice President's residence since the residence was acquired.

Can you tell us what the current condition of the Vice President's residence is now?

Captain **Barnett**. Yes, sir.

You may recall, sir, that several years ago some extensive work was done putting on a new roof and redoing the exterior walls to tighten them up and cut down the leaking. Subsequently, the plan was to proceed with the interior repairs over the course of several years during the time that the second family leaves the residence, which is the greater part of the month of August. The majority of the interior renovation work would be done annually at that time because, as I am sure you know from your own experience, it is quite disruptive when plaster is being torn off and redone. Therefore, we have moved through the house in sections to redo the plaster and put in insulation thereby preventing the wicking of moisture from the exterior into the interior walls. I have Lieutenant Commander Lofaso with me and he can tell you how we are proceeding with the present plan, what we did last in the house and the plans for 1986 and 1987.

Mr. **Roybal**. We would like to hear from him.

Commander **Lofaso**. Since I have been at the Naval Observatory since 1983, we have completed two phases of interior wall repair in the residence. Given that we have only 31 days in August in which to operate, we can basically do only one room in that time period. We will complete the interior wall repair of a third room this year.

At this rate it will take about five to six years to complete the residence, one major room at a time.

ACCOMPLISHMENT OF MAINTENANCE AT THE RESIDENCE

Mr. **Roybal**. If all you can do is one room at a time, how much Navy personnel does that take, during the month of August?

Commander **Lofaso**. We are doing the work by contractor.

Mr. **Roybal**. But you still have Navy personnel there?

Commander **Lofaso**. No Navy personnel are actually doing the wall repairs other than minor patching during the year.

Mr. **Roybal**. Do Navy personnel do some of the cleaning and other maintenance of the residence?

Commander **Lofaso**. I think you are referring to the stewards that maintain the residence.

Captain **Barnett**. There are seven mess management specialists assigned to the residence and their presence is provided for in the law. They provide for the cleaning of the residence itself and then there are some observatory staff personnel who do the routine maintenance. For example, if there was part of the plumbing leaking or if there was some damage to a wall, they would do the minor repair or touch-up work. What Lieutenant Commander Lofaso has done, for the major work, is to contract out and give the contractor a specified period of time in which start and finish in order to get the major repair crew in and out of the house while accommodating the requirements of the Vice President and his family.

OFFICIAL ENTERTAINMENT EXPENSES

Mr. **Roybal**. Would you be in charge of any review or keeping of records with regard to entertainment expenses, and things of that kind?

Captain **Barnett**. No, sir, we do not. In the appropriation is the sum of $60,000 to be provided to the Vice President for official entertainment and that is validated solely by his certification.

Mr. **Roybal**. Is that included in this request?

Captain **Barnett**. Yes, sir, that is.

Mr. **Roybal**. Mr. Skeen?

Mr. **Skeen**. Thank you, Mr. Chairman.

REPAIR OF THE RESIDENCE

Captain, good to see you here. I am curious about doing this repair work one room at a time. I understand the problem, the primary problem is to prevent wicking and getting the insulation installed.

I am a little concerned if you are going to have a five-year span whether you are going to find yourself starting back on a repair cycle again at the end of the five years.

Have you had a chance to check out how well the new remodeling stops the wicking process?

Captain **Barnett**. I have. I saw the residence in November shortly after I reported for duty here and I visited the residence again last week. I think that a very fine job has been done and it can be clearly seen from one place where work had been done to another place where work had yet to proceed, the very distinct difference in the quality of the plaster. No longer was there the buckling and flaking.

Lieutenant Commander Lofaso has seen the work over a longer period of time than I have, and he has commented on the quality of the work and the fact that we are seeing what essentially is a complete job. We have confidence now, with the roof being water tight and the exterior wall having been tightened up, that those interior walls with the firring and insulation which bring out the plaster or the drywall——

Mr. **Skeen**. You are doing the firring process?

Commander **Lofaso**. The firring process brings out the walls about an inch and a half with polyurethane insulation going up against the existing brick.

Captain **Barnett**. I am not a civil engineer by trade, but what would the estimate be for a wall that had been done properly as your contractors have done it, a 20-year life?

Commander **Lofaso**. I would say at least 20 years would be the life of the wall and the only interim work to be done would be normal painting over the years.

Mr. **Skeen**. There is no way to make some of these problems easier.

Commander **Lofaso**. In many cases, the wall will probably not be touched for 20 years anyway.

Mr. **Skeen**. Thank you all very much.

Mr. **Roybal**. How big is the residence?

Captain **Barnett**. The residence is 11,373 square feet and the usable amount is about 9,600-some odd square feet. So it is a fairly sizable residence. Six bedrooms and five full baths, two half baths that are used in the reception areas.

Mr. **Roybal**. It would probably take five years just to paint it room by room.

Captain **Barnett**. Lieutenant Commander Lofaso and his contractors have really done a very good job and they keep it up and work at it constantly. I think that the key thing is that we must work around the needs of the second family. The law provides that the maintenance and the Navy suppported operation of the residence is done under the supervision and direction of the Vice President. We do have to accommodate his requirements so that when work is done it must be limited to a very specific time and to specific areas.

Mr. **Roybal**. The best job and the best possible equipment should be used in doing the job, the best materials and everything else.

Captain **Barnett**. Another consideration is security, access to the residence is strictly controlled and Lieutenant Commander Lofaso's people are cleared, so it is a very deliberate approach. Clearly we could go out and contract to have the entire residence at onetime, but while the repair was ongoing but we wouldn't have a proper residence for the family. With that would be the attendant security problem of where you would house the second family in a safe manner while the residence was being reworked.

Mr. **Roybal**. Captain, I would like to thank you and your colleague for your presentation this afternoon.

The hearing is adjourned.

WEDNESDAY, APRIL 16, 1986.

OFFICE OF MANAGEMENT AND BUDGET

WITNESSES

JAMES C. MILLER, III, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

JEFFREY A. EISENACH, EXECUTIVE ASSISTANT TO THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

OPENING REMARKS

Mr. ROYBAL. The committee will come to order.

The committee is in session this morning to hear from the Office of Management and Budget.

I ask, Mr. Miller, that you proceed in any manner that you desire.

PREPARED STATEMENT

Mr. MILLER. Thank you, Mr. Chairman. I have a longer statement, but I would ask that it be inserted for the record and I have a short statement I would like to read.

Mr. ROYBAL. Without objection, it will be done.

[The statement of James C. Miller, III follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT

of

JAMES C. MILLER III

OFFICE OF MANAGEMENT AND BUDGET

before the

APPROPRIATIONS SUBCOMMITTEE ON TREASURY,

POSTAL SERVICE AND GENERAL GOVERNMENT

U.S. HOUSE OF REPRESENTATIVES

APRIL 16, 1986

Mr. Chairman and Members of the Subcommittee: it is a pleasure to appear before you today to discuss the FY 1987 budget request of the Office of Management and Budget.

OMB's budget request for FY 1987 is for $39,682,000 -- in nominal terms about 11 percent above our appropriation for FY 1986, after the Gramm-Rudman-Hollings sequester. However, the request -- again, in nominal terms -- is only 2 percent above our operating level for FY 1985. I believe our request for FY 1987 represents a prudent level of funding which will enable us to continue providing the President with the necessary support to participate effectively in an increasingly complex budget process and to carry out his numerous management and regulatory initiatives.

About 86 percent of OMB's budget is for personnel compensation and benefits (67 percent), standard level user charges (SLUC; 13 percent), printing of the President's Budget and related documents (3 percent), and text and data processing support (3 percent). An additional 3 percent is for telephone service, postage, utilities, and rental of equipment. The remainder covers staff travel and training, background investigations, ADP and other equipment purchases, and office supplies.

Mr. Chairman, as you know, in recent years OMB has been appropriated less than the President had requested. In real terms, OMB's FY 1986 budget authority (after the sequester) is approximately 14 percent below the level appropriated in FY 1981. Over two-thirds of this reduction occurred in FY 1986 -- because of the sequester, but also because (in nominal as well as real terms) the appropriation for FY 1986 was actually below the appropriation for FY 1985.

We have absorbed these reductions in two ways. In the long run, we have made wise investments in productivity-enhancing automated data processing systems and implemented a variety of cost-saving measures such as limiting optional travel, reducing the amount of space occupied by OMB staff, and using new technology to reduce printing costs. These improvements in overall efficiency have allowed OMB to continue performing its mission while using fewer resources.

In the short run we have taken a number of cost-saving steps, the most important of which is that we have imposed a near freeze on new hiring. Currently, over 60 positions are vacant -- positions such as the Associate Director for National Security and International Affairs, the Chief of our Water Resources Branch, and the Deputy Chief of our Budget Preparation Branch. In addition, we have: reduced our budget for equipment purchases and put off plans for replacing our faltering word processing system; limited our budget for cash awards for employees; and reduced the amount we had budgeted for overtime.

These cutbacks, I should add, have been imposed in the face of a significantly increased overall workload. We expect that nearly 40,000 work hours will be expended during FY 1986 in implementing the new processes mandated by Gramm-Rudman-Hollings (G-R-H), and about 15,000 hours in FY 1987. G-R-H has also increased our printing costs significantly, and will continue to do so in the future.

Mr. Chairman and Members of the Subcommittee: Congress and the Administration have embarked together on a path to eliminate the deficit by 1991. Meeting this goal will require careful analysis and extensive coordination. We must eliminate those government programs that are not justified, pare those that are bloated, preserve those that are warranted, and increase those that are of highest priority. And, we must continue to implement management and regulatory reforms to ensure government uses the minimum resources necessary to serve our citizens and does this in a way that poses the least threat to their well-being.

Mr. Chairman and Members of the Subcommittee: that completes my prepared statement. I shall be happy to address any questions you might have.

BUDGET REQUEST

Mr. **Miller**. Mr. Chairman, members of the subcommittee, it is a pleasure to appear before you today to discuss the fiscal year 1987 budget request of the Office of Management and Budget.

OMB's budget request for fiscal year 1987 is $39,682,000—in nominal terms about 11 percent above our appropriation for fiscal year 1986 after the Gramm-Rudman-Hollings sequester. However, the request—again, in nominal terms—is only two percent above our operating level for fiscal year 1985. I believe our request for fiscal year 1987 represents a prudent level of funding which will enable us to continue providing the President with the necessary support to participate effectively in an increasingly complex budget process and to carry out his numerous management and regulatory initiatives.

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In the short run, we have taken a number of cost-saving steps, the most important of which is imposing a near freeze on hiring new staff. Over 60 positions or about ten percent of our total authorized positions currently are vacant, including the Associate Director for National Security and International Affairs, the Chief of our Water Resources Branch, and the Deputy Chief of our Budget Preparation Branch. In addition, we have reduced our budget for equipment purchases and put off plans for replacing our faltering word processing system; limited our budget for cash awards for employees; and reduced the amount we had budgeted for overtime.

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Mr. Chairman, members of the subcommittee, Congress and the Administration have embarked together on a path to eliminate the deficit by 1991. Meeting this goal will require careful analysis and extensive coordination. We must eliminate those government programs that are not justified, pare those that are bloated, preserve those that are warranted, and increase those that are of highest priority. And, we must continue to implement management and regulatory reforms to ensure government uses the minimum resources necessary to serve our citizens and does this in a way that poses the least threat to their well-being.

Mr. Chairman, members of the subcommittee, that completes my prepared statement. I will be glad to respond now to any questions you might have.

Mr. ROYBAL. Mr. Miller, your request for 1987 is $39,682,000; is that correct?

Mr. MILLER. That is correct, yes, sir.

Mr. ROYBAL. That, in fact, is an increase over 1986 of almost $4 million.

Mr. MILLER. That is right.

Mr. ROYBAL. So there is an increase of 11 percent?

Mr. MILLER. Yes, the increase in nominal terms is 11 percent over the FY 1986 post-sequester number.

Mr. ROYBAL. You are requesting an increase of 11 percent for this department. We have had testimony from other departments that are, in fact, being decreased or somehow asked to absorb Gramm-Rudman and they have reasons why they should not be decreased. What are your reasons for increasing the budget?

Mr. MILLER. I think we need to put this in historical perspective. Last year OMB took a rather significant hit in the appropriations process; rather than get a nominal increase, we got a nominal decrease. The workload on OMB has continued to increase, especially due to Gramm-Rudman-Hollings. This additional workload came at a time in which OMB had to meet the lower nominal figure for 1986. Consequently, we have had to put a freeze on hiring. If you look back in the context of what has happened since 1981, OMB's funding level in real terms has gone down despite all of the publicity attendant with OMB's role. OMB's funding level in real terms has gone down since 1981. My understanding is that the agencies coming under this subcommittee have on the whole gone up, so we look at the last year as an anomaly in this process. Obviously the Justice Department has increased dramatically. I am not saying that is the standard that should be used, but OMB's budget authority last year was an anomaly.

Mr. ROYBAL. There are many agencies, Mr. Miller, that help the poor and disadvantaged, and they all have valid reasons why they should be increased at all, much less 11 percent. Yet, that is not permitted. Again, this committee is faced with that specific question, why one agency and not the other.

Mr. MILLER. I can understand and sympathize with the view. Let me just say again, we are down for 1986 not only because of the sequester that every agency had to absorb, which was only 4.3 percent. We are down much more than that. This budget request for 1987 would not quite restore us to the 1985 level. We would in real terms—have less resources than OMB had in fiscal 1985 even though OMB has additional responsibilities.

One standard to use would be to look at what OMB's sister agencies CBO and GAO received. Since 1981 both have grown rather dramatically while OMB has actually gone down. I remember sending an amendment for increased funding of CBO to the President that would partially take care of the additional burdens imposed on CBO by the Gramm-Rudman-Hollings process.

To some extent the workload is uncertain because we do not know whether there is going to be a sequester. We have to prepare an initial sequester report on August 20 and prepare a revised sequester report on October 5. Whether we incur the printing costs will depend on whether our estimate triggers the sequester.

But let me just say that I know from firsthand knowledge in talking with the staff at OMB, that they are always spread thin—they are spread extraordinarily thin right now in the wake of a budget process that saw us first go through the Gramm-Rudman-Hollings process last fall which took a lot of work. Then in January we went through preparing the Gramm-Rudman-Hollings report at the same time that we were preparing the budget. Now, of course, we are receiving a lot of questions from members of Congress to which we must respond. Nerves are very frazzled, people are worn pretty thin.

The resources that we are asking for would not fully restore us, in real terms, to where we were in 1985.

CUSTOMS

Mr. Roybal. The problem is every agency suffers from the same ailment. One specific agency is Customs. You probably know that the President's Commission on Organized Crime urged the President to order the military into the fight against the airborne, amphibious and overland invasion of the United States by drug smugglers.

Mr. Miller. Yes.

Mr. Roybal. Still, Customs was reduced by 1556 positions in their budgetary request.

Mr. Miller. There is a group that the Vice President is involved in with respect to drugs. There is a group with which the First Lady is involved. This is a group that the Attorney General is overseeing.

Mr. Roybal. But——

Mr. Miller. What we are doing is looking at the drug problem and the resources spent at keeping foreign governments from letting the drugs be manufactured or grown. We have efforts to interdict drugs coming in; we have efforts to reduce demand by impressing upon people——

Mr. Roybal. With all due——

Mr. Miller [continuing]. How debilitating it is.

Mr. Roybal. The action with respect to interdiction of narcotics is in Customs, with all due respect to the Vice President and the First Lady. That junk continues to come in and with a reduction of over 1500 men it is going to be even worse.

Mr. Miller. Well, what we have done, Mr. Chairman, is increased the set of resources that deals with the problem. We have increased that budget by $146 million for fiscal 1987. We have made a summary adjustment in Customs, because there are some programs we think more efficient than others.

Mr. ROYBAL. But let us look at Customs at the present time. We have seen this firsthand in a little trip we took to Hawaii, for example, where there is only one dog on the whole island sniffing for narcotics. You know——

Mr. MILLER. I will give them another dog, Mr. Chairman. [Laughter.]

Mr. ROYBAL. Not only should you give Customs another dog, you should also make money available so that it can train more dogs and have them more widely in use. You know, this is——

Mr. MILLER. I know it is serious.

Mr. ROYBAL. This is probably the most serious matter in the whole country because it is going into our schools, affecting our sons and daughters.

Mr. MILLER. I have three——

Mr. ROYBAL. They may be the ones that will be tempted and I hope not.

Mr. MILLER. Absolutely.

Mr. ROYBAL. This is a very serious situation.

Mr. MILLER. I have three teenage children and one of the things that concerns me greatly is the use of drugs.

Mr. ROYBAL. I am glad it does, but, by golly, apparently it is not reflected in the budgetary request.

Mr. MILLER. I would argue that it is, Mr. Chairman.

Mr. ROYBAL. You show me where I am wrong.

Mr. MILLER. What we have done is take a systematic approach to this issue and increased resources going to that effort by $146 million. There has been some rearrangement in resources there. We have experts involved in the interdiction program, involved in the suppression of the production of the commodity, people involved in reducing the demand and impressing upon children especially the dangers of becoming involved, taking drugs, becoming addicted to drugs. It so happens there are some adjustments in the Customs Service account, but it is the judgment of the experts involved in this area, who are trying to reduce the overall consumption and harm to American citizens from this threat, that this rearrangement in resources makes sense.

Mr. ROYBAL. Additional money probably is needed for education, and for many other things too. Nonetheless, in the actual interdiction of narcotics there is this tremendous decrease in personnel that is only going to result in more problems.

Now, this committee put into the bill last year not only the restoring of the positions but we did, in fact, increase the positions. We also had money in there for sophisticated aircraft that are needed.

Mr. MILLER. P-3s, yes.

Mr. ROYBAL. We included monies for other things, and the entire bill was vetoed.

Mr. MILLER. Yes.

Mr. ROYBAL. Now you come back with a similar request, with a decrease in personnel and with none of the other things that we had in that piece of legislation already passed by the House, and the Senate. None of that is in here.

Mr. **Miller**. Right.

Mr. **Roybal**. Then we get your agency asking for an 11 percent increase, while this agency that is revenue producing and also so important with interdiction of narcotics is getting decreased. It is very hard to understand.

Mr. **Miller**. Well, keep in mind the interdiction of drugs is only one of the responsibilities of the Customs Service.

Mr. **Roybal**. I understand—no, no——

Mr. **Miller**. Again, it is one of the major and most important responsibilities of the Customs Service. You are right, it generates revenue. When I testified in the other body two weeks ago, Senator DeConcini raised the question with me of the effectiveness in terms of additional personnel, in generating additional revenues from customs duties which is a very good point. I do not have an answer for him yet. I think you are probably implying the same thing. I will send you a copy of whatever we come up with.

[The information follows:]

The Customs Service is estimating collections of $15 billion in total revenue in FY 1987. This is an increase over the FY 1986 estimate of $13.9 billion and the FY 1985 actual amount of $13.2 billion.

The Customs Service is not anticipating any revenue losses as a result of the reductions imposed by the Gramm-Rudman-Hollings measure. It is important to note that, unlike the Internal Revenue Service, Customs revenue is not a product of overall personnel levels, but rather a factor of general economic conditions and overall trade relations.

The Internal Revenue Service has been able to analytically document a specific marginal relationship between budget and personnel levels and the amount of tax revenue to be gained or lost. The Customs Service has never been able to document, through analytical data, a relationship between their overall staffing levels and total revenue to be achieved.

Mr. **Roybal**. Thank you.

My ten minutes are up.

The chair recognizes the gentleman from New Mexico, Mr. Skeen.

EFFECTS OF GRAMM-RUDMAN-HOLLINGS

Mr. **Skeen**. Thank you very much, Mr. Chairman.

Mr. Miller, it is good to see you here again.

Mr. **Miller**. Thank you, sir.

Mr. **Skeen**. And I know in your opening statement you say that the justification for the additional funding and so forth is predicated on the idea that a lot of this is due to the increased workload, workload mandated by Congress itself. Is that pretty much the tenor of what you are saying?

Mr. **Miller**. Mr. Skeen, I would say yes. I do not want to imply that the entire increase from the post-Gramm-Rudman level to our FY 1987 request, as the chairman pointed out, an 11 percent nominal increase—is due to Gramm-Rudman-Hollings. I think the level at which we were appropriated last year was insufficient for OMB to do its job. So there is some of both. If you had to translate that additional workload into personnel, you are looking at something like 20 personnel that would be involved to meet this additional workload.

Mr. **Skeen**. You have a 60-vacant position situation there now.

Mr. **Miller**. Yes, and it is very hard to respond to everything. I do a little walking of the halls and talking to people to try to make sure that everybody understands how much I appreciate them and the President appreciates their work. I presume Congress appreciates their work too, because we get a lot of inquiries to which we respond. But people are working very hard, very long hours. It is beginning to show, frankly, in the quality of the work.

Mr. **Skeen**. What is a dollar figure that you have as to the impact of Gramm-Rudman? Is that the sequestered figure you talked about, one million?

Mr. **Miller**. Yes, but I will have to get you that figure.

Do you have that, Jeff, the dollar figure?

Mr. **Eisenach**. The effects of the Gramm-Rudman cut?

Mr. **Skeen**. Yes.

Mr. **Eisenach**. We took a cut of $1.6 million due to Gramm-Rudman-Hollings.

Mr. **Skeen**. That is the figure I was talking about. Do you have any detailees working over there at OMB?

Mr. **Miller**. We do have some; however, they are fewer in number now than they have been in the past.

Do you have that, Jeff?

Mr. **Eisenach**. At the moment, we have 45 detailees on board; 32 of those are specifically assigned to the management area, with responsibility for a lot of interagency activity. We are aware of the GAO Comptroller General's decision in March of last year. These detailees are doing work in support of their home agency that would have been done at their agency.

Mr. **Skeen**. So you maintain a criteria of justification.

Mr. **Eisenach**. Very much so.

Mr. **Skeen**. What about political positions? Do you have any positions that you consider political over there other than your own, of course?

Mr. **Miller**. The Schedule Cs and the noncareer SES positions are political. There are very few of these. Of course, the deputy director, Joe Wright is a Presidential appointee.

IRS SUPPLEMENTAL

Mr. **Skeen**. I am a little concerned at the latest Administration policy statement on the pending supplemental we are working on, H.R. 4515. The Administration objects to a lot of provisions and supports a few of them, but there is one request that I noticed was notably absent and not mentioned anywhere, which is the IRS supplemental. I think it is very urgent. How much is it? $354 million for the IRS account?

Mr. **Miller**. We think it is urgent. We would like to see a clean supplemental that contained that money. Also there is money for an international organization that has to pay out in marks and, as you know, the mark has appreciated relative to the dollar, so to pay the same thing they need more dollars. We would urge a clean bill and that those supplementals go forward. We have tried very hard with the IRS to avoid the congestion that happened last year where we had sacks of mail and returns stacked up in bathrooms and things like that. I think from the reports I have received and the data I have been made aware of—in terms of IRS's processing—they have been able to do a much better job this year, but they need those additional funds. We have apportioned IRS and given them more funds anticipating approval of some of these monies, so that they could staff up during this period to meet that peak.

Mr. SKEEN. So they have actually run out of funds then?

Mr. MILLER. They will run out of funds if this supplemental is not approved.

Mr. SKEEN. This committee shares that concern too, and I was just amazed that the request was not made in the supplemental for the IRS.

Mr. MILLER. Oh, there was, Mr. Skeen.

Mr. MILLER. We did come forward and ask for some funds from——

Mr. SKEEN. It was absent from the Administration policy statements.

Mr. MILLER. That was circulated yesterday?

Mr. SKEEN. Yes.

Mr. MILLER. If so, that was an oversight. We have some significant problems with the urgent supplemental, as you know, but we surely are in favor of the IRS emergency supplemental of $340 million.

OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Mr. SKEEN. You are catching an awful lot of heat from three chairmen of the House committees over the OIRA, Office of Information and Regulatory Affairs. I think one of them stated that that particular agency has been engaged in regulatory reform activity not supported by the Constitution or statutes and you contravene explicit congressional delegation, subverted the meaning of public participation and now we are getting the Senate excited over there. We have the self-appointed investigators going on over there too.

What kind of response do you have to these assertions from these three chairmen? What is the situation all about?

Mr. MILLER. Congressman Skeen, having been the first administrator of the OIRA, I think its role is very important. As you know, it is multi-faceted. We have paperwork burden reduction responsibilities; we have information policy responsibilities; we have computer acquisition responsibilities; and we have some regulatory reform responsibilities.

Mr. MILLER. With the possible exception of the latter——

Mr. SKEEN. The paperwork.

Mr. MILLER. The authorization does not speak directly to regulatory oversight; nonetheless, because of the close linkage between information collection and the implementation of regulations, regulatory oversight flows from the Paperwork Reduction Act passed in 1980 before the Reagan Administration came into office. This act set up the Office of Information and Regulatory Affairs for 1981. I think the work of the office has gone very, very well. It is obvious any time that someone gets involved in oversight of regulatory activity and especially acting as the eyes and ears of the President, there is going to be controversy. I have made sure, to the best of my ability, that we have placed appropriate safeguards on our oversight of rules and regulations.

A very legitimate question has arisen about the reauthorization of OIRA. Again, I was not here during this period, but my understanding is that the Administration has expressed and is continuing to express keen interest in reauthorizing OIRA. We essentially supported the Senate version of reauthorization in the last Congress—S. 2433, as reported. As you know, new Senate bills have been introduced, and we have had some discussions with members of the other body.

I look forward to discussions in this body concerning the reauthorization of OIRA. I would just point out that in response to one of the criticisms that you have noted, I believe that the President's oversight of regulatory activity is an inherent responsibility and authority derived from the Constitution. As a result, I do not believe it is necessary for a particular office to be authorized in order for the President to carry out that responsibility.

Mr. SKEEN. Well, the assertion has been made too that this agency has operated for two years without any authorization. What is your view about why all the concern now? Is it because it is becoming active or some decisions have been made that made some of the authorizing committee chairmen unhappy?

Mr. MILLER. No, to tell you——

Mr. SKEEN. I am not trying to help you pick a fight, but we kind of like to know what it is all about.

Mr. MILLER. I do not want to pick a fight either, but I think—Mr. Skeen, you have experienced it as well—there is a general reluctance to move forward on an agency or on a particular agency element that is not authorized after its authorization lapses. I think that is more the situation than a flare-up—although from time to time any agency is going to have to make decisions where it is going to pit powerful people against each other. If you get someone comfortable with a given matter, you may get the other side angry, and vice-versa. There is some of that. I think it is a legitimate concern that has been expressed, but maybe I come to this with a parochial view. When I was at the Federal Trade Commission, we operated without an authorization for several years. I tried very hard to get it reauthorized, but the reauthorization process sometimes is difficult because you have one body of Congress having one view and the other body having a different view, and the Administration perhaps even having a third view.

I just hope we can work this out.

Mr. SKEEN. Thank you for your responses.

Thank you, Mr. Chairman.

SUGAR

Mr. ROYBAL. The gentleman from Hawaii.

Mr. AKAKA. Thank you very much, Mr. Chairman.

Good to see you, Mr. Miller.

Mr. MILLER. Thank you, sir. Good to be here.

Mr. AKAKA. I understand that your testimony was so good that there are no questions. So I am going to have to resort to something else that is not really part of this committee, but it is within your jurisdiction, and that is to ask a question about sugar.

Mr. MILLER. Okay.

Mr. AKAKA. I know that, Mr. Miller, the Department of Agriculture has the primary responsibility of sugar and sugar quotas, but your office we know, as many other offices, has considerable influence in particular on the Department of Agriculture. I want to commend you for your recent announcement and your intention to comply with Section 902 which requires that the quota—requires the quota for sugar will be implemented which will have no cost to the federal government, and the recent announcement to extend the sugar quota for three months, I feel, is a step in the right direction for our country.

Prior to that for three years there was no change in the quota and as a result there was no cost to the government, but on September 13, 1985 the quota was raised by 600,000 tons and as a result it cost the government about $100 million for the increase above domestic sugar requirements. So we look upon this as being unnecessary expenditures.

Now, this year we have a new farm bill and the bill contains a section that gives the President all authorities to operate the sugar program and it operates at no cost to the federal government by preventing a cumulation of sugar acquired by the Commodity Credit Corporation. Again, this strengthens that idea of no cost.

My only question to you, Mr. Miller, is whether you can assure me that OMB will strive to keep the congressional intent and operate the sugar program at no cost to the federal treasury?

Mr. **Miller**. Mr. Akaka, let me say, that I will strive very diligently to operate within the confines of the law. Whatever the law requires, I will meet. Secondly, however, within the discretion afforded by the law, we will carry out the policy of the President. The President, as you know, in the past expressed some reservations about the sugar program, especially its cost to consumers because the effect is to raise significantly the cost of sugar to consumers.

Mr. **Akaka**. Thank you.

That is all, Mr. Chairman. Thank you very much.

Mr. **Roybal**. Thank you, Mr. Akaka.

The gentleman from Arizona.

Mr. **Rudd**. Thank you, Mr. Chairman.

Jim, the Gramm-Rudman-Hollings thing is a problem for everybody, and I understand that it is for you and for personnel and that sort of thing. I will tell you that I just spent a couple days with a CPA on what I am going to do on several things, but in my office—and I had to cut a position, and I hope I can make it to September and beyond.

But it really is a problem for everybody. I have had some problems getting responses from your office.

Mr. **Miller**. You have?

Mr. **Rudd**. I have.

Under the circumstances it might take this kind of a way to bring it to your attention rather than trying to be injurious or anything like that, but I have to serve the people who elect me, as you do.

Mr. **Miller**. Yes.

Mr. **Rudd**. Even though you do not depend on them to go to the polls to approve of what you do. Let me give you just a couple statistics here that I have put together strictly for your attention, but it has to do with congressional responses. I know that you will want to know that.

Mr. **Miller**. Yes.

Mr. **Rudd**. I understand from the beginning that you have personnel problems; you cannot always do these things, especially with the budget problem that you live with 24 hours a day and for 18 months now. But over the past several months you have been, your office has been negligent in responding to congressional inquiries, on behalf of my constituents anyway, and in my own office I have two such complaints I want to bring to your attention.

One is an instance where OMB delayed responding to my inquiry for over six months, and its final response was prompted only when my staff assistant at my request made four telephonic inquiries over a three-month period.

In this case my staff requested to speak with a person responsible for responding to my inquiry and was told that it was your policy not to reveal the name of the person who will draft the final response.

The second complaint involves an inquiry which the legislative affairs office claims to have never received. I made the original inquiry in May 1985. When I had not received your response by August, I asked my staff to follow up by telephonic inquiry and OMB assured her that they had received my inquiry and the response would be forthcoming immediately.

As of January 1, I had not received this response and again we telephoned your office, and this time it was learned that OMB never received my original inquiry. So I promptly reinquired. OMB contacted my office by telephone to inform me that while my constituents' concerns were now outdated, that they would provide a response explaining the current status of the situation involved.

On February 1, I still had not received a response from OMB, so again a telephone call was made to the legislative affairs office, probably the wrong office, but the contact this time in essence told the staff that they were too busy to respond to congressional inquiries and because my particular constituents' concerns were outdated, a final response to my inquiry would be unlikely.

Mr. MILLER. Let me——

Mr. RUDD. Let me finish first.

Mr. MILLER. Sure.

Mr. RUDD. What happend was the staff prepared another letter, and it was at that point I reviewed the file and I was really astonished and that was the reason for this. So I cancelled the letter because I knew it was not going to do any good, and I decided to take this way to just let you know about this.

Mr. MILLER. Sure.

Mr. RUDD. To try to be as noninjurious or anything like that. That is not my intent. I just want all of us to get along together, and we have to.

Mr. MILLER. Right.

Mr. RUDD. And I certainly have to get along with my people in my district.

Mr. MILLER. Sure, you have to do that.

Mr. RUDD. So as a member of Congress I feel a strong responsibility to ensure that taxpaying constituents receive adequate and timely answers to the problems that they have, and in some instances these answers require assistance from federal agencies and keeping in mind the position of inquiring taxpayers, I want to ask you just three questions. They are these.

How much priority does OMB place on responding to congressional inquiries?

Mr. MILLER. The answer is a very high priority.

Mr. **Rudd**. I would hope so.

Mr. **Miller**. In fact, there are various levels of response within the agency. Our intent is to make a specific response to a congressional inquiry within ten days. I apologize for these instances that you indicated because this was obviously a breakdown in our system. I could say that, of course, in October we had the transition and people were getting their feet on the ground and as I indicated before, going through the process of working with Congress and developing Gramm-Rudman-Hollings and then getting out the Gramm-Rudman-Hollings reports and the budget at the same time in January and February. But that is not an excuse. I want to make sure that even if we do not have time that we have a letter back to you saying please give us six more weeks or six days or whatever, but to have no response is just not—

Mr. **Rudd**. Let me tell you the rule I follow. I get an inquiry in and it is absolutely incumbent upon my office to get an answer back within 48 hours, and that answer can say, look, I have got your inquiry, I am working on it and I figure that gives me 30 days if it needs an inquiry. But at least the people know—

Mr. **Miller**. Know that you have it and that you are working on it.

Mr. **Rudd**. If they do not get it within ten days or two weeks, they start saying bad things about me.

Mr. **Miller**. That is a good system, yes.

Mr. **Rudd**. The second question is what procedures are currently in place to assure that congressional inquiries received a timely response? You have said you want to get it back in ten days, and do you follow that rule?

Mr. **Miller**. We do.

Mr. **Rudd**. Does your staff know that?

Mr. **Miller**. Yes. Frankly, our tracking system is not as sophisticated as the one that we had at the Federal Trade Commission where we had a particular system to make sure letters were being answered promptly. I had to go through it every week. It showed any letters in arrears and I had someone that went around just before the report went to me and made sure that no one was sitting on a letter.

I am glad you brought this to my attention because that is an additional incentive for me to install a similar system. We get a level of correspondence, of course, at OMB far in excess of what we experienced at the FTC. A large number of the inquiries, especially congressional inquiries, deal with a number of agencies and many times one agency will disagree with another agency. Rather than reporting that we cannot do anything because there is disagreement, we are constantly trying to bring the parties together so that we can report back to you this problem has been solved. That is the kind of letter I like to sign.

When I sign letters to members of Congress, I like to thank you for your inquiry and indicate that we have looked into this and that we have been able to solve the problem that you have identified.

Those are the best kind. But sometimes those take time because it does involve negotiations with people. In addition, sometimes it is as if at each point you say, well, surely we are going to solve this tomorrow or the next day, so you put off going back with a response. You want to come back with good news and sometimes that delays the response process.

Mr. **Rudd**. The third question I have for you, it is not really very important to me, but since it came up I would like an answer to it anyway. Why does OMB not disclose the name of the staff person responsible for responding to the inquiry so there can be interchange and somebody can call up and say can I talk to Joe or is there some way that I would know otherwise that they are handling it?

Mr. **Miller**. There will always be someone at OMB who is responsible to respond to it. That is no quesetion. The preferred course of action in dealing with someone as important as a congressman or senator is for a more senior appointee to respond directly to them. Oftentimes we have people at OMB who are fairly inexperienced, who can become quickly intimidated—I know that would not be your intent and I think it is just better for the more senior person to deal directly with the congressional staff member on an issue like that. It is not sufficient for us to say we won't tell you. That is not sufficient. We ought to have a name in each case, but it may not be the person who was doing actually the work.

Mr. **Roybal**. The time of the gentleman has expired.

The gentleman from Maryland, Mr. Hoyer.

Mr. **Hoyer**. Thank you, Mr. Chairman.

Mr. Miller, I note with some degree of interest in your statement you indicate in real terms OMB's fiscal year 1986 budget authority after the sequester was approximately 14 percent below the level appropriated in fiscal 1981. I find that interesting because one of the other subcommittees I serve on is Education and that figure is low by education program standards which are generally 30 percent to 25 percent below 1981 levels.

Mr. **Miller**. Yes.

Mr. **Hoyer**. I am glad to see that you and I both agree that that is a relevant comparison for domestic agencies. We know the Administration does not believe it is a relevant comparison for the Defense Department, but as a matter of fact your domestic agency is somewhat comparable. Effectively what you mean is it is difficult to do the job in 1987 that you did in 1981 if you in real terms are going backwards.

Mr. **Miller**. For OMB, especially with the additional responsibilities associated with Gramm-Rudman-Hollings.

Mr. **Hoyer**. Which the Administration supports.

Mr. **Miller**. Yes.

Mr. **Hoyer**. In order to save money.

Mr. **Miller**. Yes.

Mr. **Hoyer**. But obviously you cannot do that in every agency——

Mr. **Miller**. Yes.

FUNDING OF METRO

Mr. **Hoyer** [continuing.] If you are going to save the money.

Let me ask you a couple of specific questions. To what extent, Mr. Miller, did you get involved in the decision with reference to the federal government's funding of mass transit systems generally and, of course, the Washington Metropolitan Area Transit System in particular, and did you consider the commitment made by the

Department of Transportation and Mr. Stockman in testimony before this subcommittee with reference to the funding of the program that was adopted pursuant to the request of the federal government in 1984 and 1985?

Mr. **Miller**. I was involved in the following way. We have what are called director's reviews in the fall as part of the process of preparing a new overall budget and the details of a budget. Books of major isues and minor issues are prepared—the major issues being those that are brought to the director's attention for his decision and the minor issues being those issues that are decided by the program associate directors, but for which information is provided and over which the director has oversight.

As I recollect in our director's review on this matter, we had some extensive discussion about the way to treat mass transit, and I made the decision which was then presented to the President for his affirmation. At the time, I believed the numbers we went forward with were prudent numbers in light of what had gone before and the amount of funds that had been provided for the local system. And I did not view it as being inconsistent with whatever representations that my predecessor had made in this regard. There is enough money remaining, I understand, to fund the Green Line, for example. There are unobligated balances. I think, Mr. Hoyer, I responded to you before on this. You asked me about this when we had the presentation of the budget before you, and I believe that I responded something to this effect at that time also.

Mr. **Hoyer**. Does the fact that the Senate has included the local system in its budget—have you considered that in any way as an impact on your proposal?

Mr. **Miller**. We adhere to the President's 1987 budget proposal even though there are differences of opinion with the Senate.

FEDERAL PERSONNEL

Mr. **Hoyer**. Okay. To what extent, Mr. Miller, do you get involved in making a judgment on payouts for federal employees, personnel?

Mr. **Miller**. In putting together the budget and recommending it to the President, I insisted, given that there was a freeze on federal salaries last year and given that we were going to ask for a two percent increase in the contribution to retirement, that there be an across-the-board salary increase. As you know, there are within grade step increases, so even with a so-called salary freeze, civil servants usually get a raise of some kind during the year. But I insisted that there be an increase and we went forward with the three percent which was approved by the President.

Mr. **Hoyer**. In the process of that consideration did you make a judgment as to the differential that exists between private sector and federal employees' salaries?

Mr. **Miller**. You know the process is very involved.

Mr. **Hoyer**. There has been a lot of dispute as to what those figures are, and I am wondering if you had made in OMB an analysis yourselves as to what the appropriate facts are.

Mr. **Miller**. The analysis that we have, I think, is predicated largely on budgetary concerns, but we maintain an ongoing analysis of reports of the President's pay agent and the recommendations of the Advisory Committee on Federal pay.

Mr. **Hoyer**. The Pay Advisory Commission?

Mr. **Miller**. Yes, the pay agent and the Advisory Committee on Federal pay that make annual recommendations to the President We also analyze quit rates hiring practices and quality variations in order to assess the overall direction of pay policies. Of course, the final decision on the pay raise has to be made by the President together with his interplay with the Congress, but the figure we put in the budget was the three percent figure.

Mr. **Hoyer**. I know that. The reason I ask the question is there has been a lot of dispute, particularly over the last five years, particularly led by Dr. Devine, as to the accuracy of the President's Pay Advisory Commission which gives it and has generally concluded that federal employees are now some 19 to 21 percent behind private sector counterparts. I am wondering whether or not in light of the fact that you have the ultimate responsibility of making that recommendation in terms of dollars you had made an independent analysis of that. But to your knowledge you have not?

Mr. **Miller**. To my knowledge we have not, but I will look into it.

[The information follows:]

The analysis that went into deciding on a 3 percent increase for Federal civilian employees in the President's budget was part of the regular OMB budget preparation process. Like all major items and issues included in the President's budget, Federal pay levels are analyzed in terms of their budget impact at current services and other policy levels.

After the budget is transmitted, the President, in late summer, again looks at the pay raise issue. According to statute, that is the time the President reviews the report of his pay agent (which includes views of the Federal Employees Pay Council) and the recommendations of the Advisory Committee on Federal Pay.

If however, because of "economic conditions affecting the general welfare", the President considers it inappriate to make the pay adjustment recommended by his pay agent, he may send up an alternative pay plan.

On a separate track, OMB has been involved in interagency working groups that have extensively studied the accuracy of the pay comparability system. Major improvements in the survey on which the pay agent's report is based have been initiated in fiscal year 1986 in the effort to more accurately measure comparability with the private sector.

Mr. **Hoyer**. Mr. Skeen—this will finish my time—mentioned the issue of the IRS appropriation, and you indicated that the supplemental is obviously controversial; you do not like—you being the Administration—do not like certain items in the supplemental. It is my understanding that in approximately July if a supplemental is not passed for IRS, IRS will shut down effectively?

Mr. **Miller**. IRS will not shut down. It will not run out of money in July. It would surely, at some point, draw the conclusion that Congress would not appropriate the supplemental and take appropriate management steps to curtail spending. IRS will be in a real bind. It would not shut down in July because the amount of $340 million is only a small portion of their total funding. But it would reach a point where it would be fairly difficult for them to continue without having things begin to back up and without having audits trail off and so forth.

Mr. **Hoyer**. Have you made a judgment as to when that will happen?

Mr. **Miller**. No.

Mr. HOYER. With respect to that, you have proposed to increase personnel in the IRS and then decrease personnel in the IRS for a net appreciation of about 4,000 personnel over the next few years.

Mr. Miller, there is a thought that with effective enforcement in the IRS that there is greater tax collection, greater in geometric figures, that will occur. Have you made an analysis as to how much it will cost us in tax compliance to cut back those 3,000 as you propose in the budget over the out years?

Mr. MILLER. We have undertaken studies of that exact question in conjunction with the Treasury Department—what is the marginal effect of adding the resources to IRS in terms of generating additional tax monies?

You know, there have been reviews of that; Treasury periodically does some review of that. Various agencies comment on it. I know there is that body of literature that is out there, but I have insisted that we really do it right this time, and we all agree on making sure that we get the best research on this. So I would not prejudge it at this point.

Mr. HOYER. Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

I want to welcome you, Mr. Miller. Last night I read the Newsweek piece by Mr. Stockman and I hope you do not have any plans to write a book.

Mr. MILLER. As I tell people, Mr. Wolf, I will be lucky if I get to do an American Express commercial.

Mr. WOLF. Well, I hope you do not even do that. I respect you and I think it would be demeaning if you did. I think for public officials to leave and play on that public experience and tell in that way is really kind of disgusting. So I respect you and I hope I never watch you on Channel 4 doing an American Express commercial. I am not going to do one, and I hope nobody here does. I hope you do not sell Coke and do all that. I mean that seriously. I do not mean it as a joke. I think it really degrades public service in a way that just does not send a very good message to school kids—from fourth graders to high school seniors—who look at these and see what is going on in the government. So I really hope you do not.

Two or three quick questions.

Mr. HOYER. Will the gentleman yield?

I should not be doing this, but a guy that sold GE products has done pretty well in life. I am just teasing. Frank, I understand.

Mr. WOLF. And I know you mean that jokingly, but I think the difference is the President, who I think is one of the greatest presidents we have ever had, did that before he came into public service, and I think there is a difference there.

Mr. SKEEN. We can get you on GE though, Sten.

Mr. WOLF. When people come into public service, it's as a public trust. Most people, yourself included, can make much more money out in the private sector than you could here. I am sure the only reason you were not able to answer Mr. Rudd's correspondence is you are just bombarded with legitimate requests and illegitimate requests. So I just think we do not want people leaving public service and go out and play on it. I know you won't.

The three-year basis recovery rule in the tax bill, we have a letter from the Department of the Treasury saying that it would not raise any additional revenue for the federal government. Does the concern expressed by a lot of federal agencies—you have not had the benefit of seeing all the letters that Mr. Hoyer and I got saying a lot of people are going to leave--give OMB any concern? It will affect your people too.

Mr. MILLER. Yes, it does. I have one extraordinarily capable career civil servant—we were talking about the same piece of legislation—that will have to look very long and hard whether it is worthwhile to stay on because of the incidence of the tax. Yes, I had not become involved in the issue directly, but it is the sort of thing that is being considered.

Mr. WOLF. The second question ties into that. I introduced a bill in the last Congress calling for a little Hoover Commission to look into the federal service and federal employment—much like the Hoover Commission did back in the early 1950s. There have been a lot of changes in civil service. Do you see any merit in having a Hoover Commission set up on a bipartisan basis, perhaps calling it the Ford Commission with Jerry Ford as the chairman to look into this and see what we will have to do?

Mr. MILLER. I would say right now is not the time. We have some changes in the winds. The President may well be making some recommendations on some personnel changes. We have Gramm-Rudman-Hollings, we have a dynamic new director of the Office of Personnel Management. I think it would be good to see how this works for a period of time before making a decision. We also have the Grace Commission report and they made certain recommendations.

Mr. WOLF. They did not really deal with it though.

Mr. MILLER. That was not a major focus of their activity, but we have something to work with. I think it would be good to get our feet on the ground on this to see how we can work on it before making a commitment to go foward with a bipartisan commission.

YEARS END SPENDING

Mr. WOLF. Lastly, last year when OMB came up here I asked the question and they agreed to send something up and it never came up, but I guess it is because they were all so busy. But they were going to draft legislation. What I have been concerned about on this issue is when I worked in the Executive Branch for five years—I worked for Rog Morton for five years—I watched end-of-the year spending, that you would either had to use or lose.

Mr. MILLER. Oh boy.

Mr. WOLF. When it came down to the last 30 days, it was not too unusual to see new carpets, additional travel and so many other things. Would you look at drafting a piece of legislation and sending it up to us so I can look at it which would say to the federal manager that if you do not spend this amount of money you could get a portion of it for a merit bonus and, secondly, there will be no discrimination on your budget next year based on this.

Mr. MILLER. Right. I agree, yes. It is a perverse set of incentives, isn't it.

Mr. WOLF. It really is, yes.

Mr. MILLER. My recollection is that Dave or Joe Wright would always send out some sort of oratory message to agencies about cramming money through the crevices at the last moment. I will look into that. Politically I am not sure whether it would be saleable to reward directly in terms of additional bonuses, et cetera, but we ought to look at something like that.

Mr. WOLF. I think it would because you are saving the taxpayer money.

Mr. MILLER. Yes.

Mr. WOLF. Right now unless you do something positive the Congress—if you reduce your budget next year and they say you did not use it, so then the Congress wants to cut you. I think you need an institutional change to encourage the Congress to respect the federal manager's initiative on making a savings. Some respectable amount for an award would be a good incentive. Maybe the coffee pot was not worn out or whatever it was, you add it on the next year. So if you can do that and get something to us within a reasonable period of time so maybe we can do something with this in this session, maybe in 30 days, is that a respectable time?

Mr. MILLER. I will get something back to you, yes.

[The information follows:]

You asked us to consider drafting legislation that would provide managers with an incentive to prevent year-end spending abuses by making some portion of unused funds available for awards. This appears to be a good idea that would complement the Administration's ongoing efforts to control wasteful year-end spending. In fact, in our review of existing procedures for evaluating and rewarding Federal employees for good performance, we found that the current system already allows employees who perform their jobs in an outstanding or exceptional way to receive cash awards and other bonuses. Achievements of agency personnel are considered in the context of programs and priorities of the agency as a whole and awards made from available budgetary resources. A major element in evaluating these employees is the level of good judgment they exercise in budgeting for and spending their agencies' funds. As a result, legislation to provide general authority to reward Federal employees is not necessary. Given that there is such authority, we plan to provide guidance to the agencies. Specifically, in this year's directive to agencies, they will be asked to ensure that efforts to prevent wasteful spending are considered in evaluating and rewarding employees.

In these times of increasingly tighter budgets, there is less incentive for waste. Nonetheless, there is always potential for some abuse. As a result, this Administration has moved aggressively to make unnecessary and wasteful spending less likely. As a part of that effort, the Administration has tried hard to ensure through the budget process, that agencies do not receive appropriations that exceed the minimum needed to carry out their missions. In addition, agencies are instructed each year to give special attention to preventing wasteful year-end spending (Enclosure A). They have also been provided with a checklist, issued by the Office of Federal Procurement Policy, for use in detecting and preventing end-of-year procurement abuse (Enclosure B). Moreover, "hot lines" have been established precisely so that Federal employees and members of the public can call Inspectors General directly and anonymously when they see specific instances of waste, fraud, or abuse (Enclosure C).

Finally, the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) provides a continuing impetus for eliminating unnecessary spending and a compelling incentive to manage funds responsibly both throughout the year and at year-end.

Nevertheless, I am interested in your idea of providing even more incentives for saving taxpayers' money and will continue to review the possibilities.

ENCLOSURE (A)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

M-85-18 June 13, 1985

MEMORANDUM TO: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: David A. Stockman

SUBJECT: Prevention of Wasteful Year-End Spending

As we enter the final quarter of fiscal year 1985, I ask that you give personal attention to preventing wasteful year-end spending by those in your agency who would obligate funds simply so that the funds will not be reported as unobligated or lapse at the end of the fiscal year.

Specifically, I ask that you issue instructions to your staff to ensure that:

-- To the maximum extent allowed by law or regulations, disciplinary action is taken against officers and employees who waste public funds.

-- Employees are reminded of appropriate standards that apply to wasteful spending and the possible sanctions and penalties, and that they are apprised of how to report waste and fraud and the protections that are available for employees making such reports.

-- Obligations for the fourth quarter of the fiscal year are no higher than the average for the first three quarters, except where seasonal requirements, essential program objectives, or leadtimes justify a higher level.

-- Orders for services, supplies, materials, and equipment are not more than needed to meet approved essential program objectives and are made in accordance with the attached procurement guidance by the Administrator of the Office of Federal Procurement Policy.

-- Grants and other forms of Federal assistance are subjected to rigorous review, meet current priorities, are funded only in justified amounts, and are not made just to keep funds from lapsing or to keep them from being reported as unobligated.

-- Special attention is paid to controlling the use of funds in areas that are particularly vulnerable to wasteful spending, e.g., travel and transportation, consulting and related services, periodicals, publishing and audiovisual products, motor vehicles, public affairs, and other areas identified by assessments made pursuant to OMB's guidelines for implementing the Federal Managers' Financial Integrity Act and OMB Circular No. A-123 on Internal Controls.

Procurement executives, contracting officers, program managers, and policy officials who are responsible for initiating or reviewing procurement and grant actions should carry out their responsibilities in a way that assures compliance with this guidance.

We also ask that Inspectors General conduct an assessment of the validity of a sample of the procurements awarded in the fourth quarter. Such an approach has had a valuable deterrent effect in the past..

Inspector General personnel, auditors, and legal counsel should consider noncompliance with the aforementioned requirements to be an indication of waste.

I count on your full cooperation and personal attention to save the taxpayers as much money as possible in support of the President's objectives.

Attachment

ENCLOSURE (B)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT
POLICY

JUN 3 1985

MEMORANDUM TO HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

William E. Mathis

FROM: William E. Mathis, Acting Administrator

SUBJECT: Prevention of Wasteful Year-End Spending

The Director of the Office of Management and Budget requested that the Office of Federal Procurement Policy provide guidance on ways to prevent wasteful year-end procurement spending.

Attachment 1 is an updated check list for your use in detecting and preventing end-of-year wasteful spending and other procurement abuses. This check list should be uniformly applied at all agency levels where procurement actions are accomplished.

OFPP Policy Letter No. 81-1 (Attachment 2) requires each agency to establish an advance procurement planning system and to have review procedures for fourth quarter spending. These procedures should be updated continuously to ensure that controls are in place to cover major procurement requirements and other requirements with high waste vulnerability, such as consulting services, certain equipment and furnishings, periodicals, pamphlets or audiovisual products. The procedures and standards developed by your agency to comply with the Policy Letter are important management tools. Under the leadership of the Procurement Executive, they should be fully integrated into the overall acquisition management program consistent with the Charter for Procurement Executives. Particular standards should be developed for application to year-end spending with provision for the formal interfacing of budget, program and contracting activities early in the fiscal year. Your personal support of your Procurement Executive is critical to the successful establishment of standards and the improvement of the procurement system. We also request that you emphasize to field procurement and program personnel at all levels the importance of using the OFPP check list and of complying with Policy Letter No. 81-1 to ensure better planning and scheduling of procurement actions.

We still believe it necessary and important to emphasize these elements as a part of a sound basis for avoiding unnecessary year-end spending:

- The need for advance procurement planning procedures and standards with continuous updating.
- Better management, control, and surveillance of procurement activities down to the lowest field level where procurement is accomplished.
- Cut-off dates and standard procurement lead-times should be implemented or followed.

I cannot overemphasize that prevention of unneeded or unwise Federal spending is an essential part of our efforts to control waste, improve management, reduce the deficit, and to assure public confidence in the integrity of Government. I ask you to continue to use public funds wisely in the procurement of goods and services and to be especially alert to unnecessary, nonessential or inefficient year-end buying during this last quarter of 1985. Advance procurement planning is essential for an efficient and responsive contracting program and should be an integral part of the responsibilities of the Procurement Executive in cooperation with those who establish agency requirements.

Attachments

Attachment 1

CHECK LIST FOR PREVENTING
WASTEFUL YEAR-END SPENDING

A. Standards of Conduct

1. Have employees been advised of the expected standards of conduct as they apply to wasteful spending and the possible sanctions and penalties if conduct is improper or required procedures are not followed?

2. Have employees been apprised of their duty to report and the methods of reporting waste and fraud including hotline telephone numbers (attached) and the protections that are available to employees making waste and fraud reports?

3. Contracts or other documents must not be postdated under any circumstances.

4. Procurement actions should not be delegated or assigned to field or base stations, regional or other subordinate offices or other activities or agencies, to avoid proper review, clearance, approvals or other such internal controls required at the headquarters level.

5. Contracts to former Government employees must be closely reviewed and clearly justified. Conflict of interest considerations must play a major role in this assessment and approval and such conflicts avoided under all circumstances.

B. Need Determination

1. Is the request part of a current approved budget plan?

2. Is the request for more property or services than is needed to meet approved and essential program objectives or can it be postponed or delayed to a more propitious time?

3. Is the request duplicative in whole or in part of some other ongoing Government program?

4. Has a lease vs. purchase cost benefit review been completed, if appropriate?

5. Is the request for purchase of additional items or services not contained in the original procurement request or contractor proposal? Is this because original estimated funding needs were in excess of the funds actually required to meet the funding requirements? Is it fully justified? What events transpired to bring about the need for additional funding requirements?

6. Purchases or orders for equipment, supplies, or services should not be approved unless they have been planned in advance, properly solicited in The Commerce Business Daily, or, are needed to meet an emergency and comply with agency internal controls under OMB Circular A-123 and the Federal Managers' Financial Integrity Act, P.L. 97-255.

7. Funds should not be obligated for requirements-type or task contracts in excess of anticipated needs based on projections from prior use and current operating levels.

8. The procurement of consulting and advisory services and modifications of current consulting and advisory services contracts must be reviewed for compliance with current controls under OMB Circular A-120 and A-123.

9. Purchases by or orders from the General Services Administration, the Defense Logistics Agency, or other central procurement offices, or off Federal Supply Schedules should not be in excess of current use or inventory requirements. Use and inventory requirement must be validated. Orders should not be placed if delivery cannot be made in time to meet current need or inventory requirements.

10. Procurement actions must be reviewed to ensure that they cover essential, minimum requirements and not superfluous or "gold-plated" supplies.

11. To avoid duplication or underutilization and to foster greater economy and efficiency, users should ensure maximum utilization of available inventories and the proper use of all available resources including excess property before procuring new or additional supplies or quantities.

12. Items should not be replaced while they still are usable unless replacement is essential to meet program objectives, productivity would be increased, or substantial cost savings will result. Materials and equipment should be repaired and reused whenever practicable.

13. Renovation, moving or redecorating, should only be done when it is essential to program objectives, required because of lease arrangements or in an emergency to protect the health and safety of employees. In any case, it should only be the minimum necessary to meet program objectives.

C. Good Procurement Practice and Accountability

1. Is there time to ensure that normal procurement practices are followed? If not, the file should be documented as to why the procurement process was compressed to the point where good practices were not followed.

2. A cost or price analysis, and a determination that the Government is paying only fair and reasonable prices and will receive all appropriate discounts and credits, should be made for all contracts or modifications.

3. All noncompetitive proposals should be audited or audit information obtained, unless reasonableness of price can be established clearly by other accepted means.

4. Certification of current cost or pricing data should not be used as a substitute for preaward price negotiation.

5. Initiation of procurements in the fourth quarter for award in the fiscal year should generally be limited to small purchases or to emergency unscheduled requirements with appropriate solicitation in The Commerce Business Daily.

D. Method of Contractor Selection

1. Will a noncompetitive contract be necessary? Is it fully justified and documented? Have plans been made to prevent subsequent noncompetitive contracts?

2. Are grants reviewed to ensure they are the proper vehicle in accordance with the Federal Grant and Cooperative Agreement Act (P.L. 95-244) and are not used to avoid procurement procedures? Does the use of a grant violate a legislative mandate or authorization?

3. "Unsolicited" proposals should be truly unsolicited and should not be accepted unless they demonstrate unique or innovative concepts not otherwise available or resembling a pending competitive proposal and are for a current essential program requirement. Award will only be made after strict compliance with regulations on unsolicited proposals, including appropriate documented rationale for the decision.

4. Procurements should not be divided just to come within small purchase procedures. In accordance with good procurement practices, requests should be consolidated if it would be more cost effective to do so, to take advantage of quantity pricing. However, this should not be construed to prohibit breakout of items for small or minority business.

5. Short response times or restrictive requirements must not be used as methods to avoid full and open competition or as means of "steering" contracts.

6. You are reminded that statutes and implementing regulations require that all proposed procurement actions of $10,000 and above be synopsized in The Commerce Business Daily at least 15 days prior to issuance of a solicitation.

E. Use of Existing Contracts

1. If the request is for the exercise of options or the funding of the later years of a multi-year contract, is it fully justified, still necessary? Is the option or later year funding still reasonably priced based on historical costs for immediately preceding years?

2. If the requests are purchases off Federal Supply Schedules or orders against basic ordering agreements or requirements-type contracts, are they fully justified as to current need, pricing and the method of contracting? This applies particularly for high-waste vulnerable items.

3. If the request is to add funds to an ongoing contract with a Government Owned/Contractor Operated facility, a Federal Contract Research Center, or a Federally Funded Research and Development Center, is the requirement clearly defined? Is it fully justified? Are such contracts being used as a means to circumvent procurement requirements? Are subcontract awards being directed by the Federal agency?

4. Funds obligated to cover unpriced items, such as changes, spare parts and data, should not be in excess of current best estimates of need for those items. Additional obligations in excess of the original procurement request must be clearly justified.

5. Funds for letter contracts should not be obligated in excess of that allowed by regulations, nor should letter contracts be used solely as a vehicle to obligate funds that would otherwise lapse.

6. When contracts are modified or supplemental agreements issued to increase the level of effort or procure additional tasks, items or services, the additional requirements must be validated. The subcontracting of substantial parts of such modifications, change orders or tasks may indicate contracts are being used as vehicles to avoid competition.

7. Funds for contractor operated supply stores or other logistic support-type contracts should not be obligated in excess of current requirements or used as a vehicle to make directed procurements nor should they otherwise be used to avoid agency internal management controls. Accepted techniques and mechanisms for control of inventories, such as usage checks and economic order quantities, should be employed.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT
POLICY

Attachment 2

AUG 13 1981

POLICY LETTER 81-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases

It is the responsibility of the head of each agency to assure efficient and economical procurement. Consistent with that responsibility is an obligation to reduce wasteful practices resulting from hurried or unnecessary end-of-year procurement. In carrying out these responsibilities, the Head of each Executive Department or Establishment shall establish the following management controls:

1. Procurement procedures providing lead time and cut-off dates. Each agency shall develop procedures that allow sufficient lead time to prepare solicitations, obtain and evaluate bids or proposals, audit, negotiate, and make contract awards in an orderly manner. The procedures shall specify the lead time required and establish firm cut-off dates for submission to procurement offices of requests for contract action to be completed by the end of a fiscal year. The lead times and cut-off dates may vary with the type of contract action and dollar thresholds. Exceptions to the lead time and cut-off date procedures should be kept to a minimum and approved only under extraordinary circumstances.

2. Advance Procurement Planning. Agencies shall issue procedures that require an Advance Procurement Planning System (APP) for each activity. The procedures shall include:

    - Establishment of a specific threshold above which procurements are to be considered major;

    - Development and maintenance of an advance procurement plan to cover major procurement requirements and other requirements with high waste vulnerability, such as consulting services, certain equipment, periodicals, pamphlets, or audiovisual products. The plan should be developed well in advance of the fiscal year in which the acquisition will be made;

- Flexibility to allow revisions to the plan, but only to reflect budget changes, emergencies, and changes in program direction;
- Procurement planning that begins concurrently with the agency budget process;
- A requirement that needs are specified in a form that permits effective competition and innovation;
- A means to resolve disagreements between procurement and project offices;
- Close control of major and high waste vulnerability purchases to assure that they are consistent with the advance procurement plan; and
- An ongoing program to assess the appropriateness of the methods used to satisfy needs, including cost effectiveness, whether gold-plating will result, and life cycle costing, where appropriate.

3. Review procedures for the last quarter spending. Each agency shall develop review procedures that require: (a) close control of purchases made in the last quarter to assure that they are consistent with the advance procurement plan, (b) reevaluation of the need for purchases made in the last quarter, (c) good procurement practice and accountability to assure that contracts are awarded only if prices are reasonable, and (d) award of contracts on the basis of competition unless award on some other basis is significantly to the advantage of the agency.

4. Contract Action Log. Each procuring activity shall keep a log of major or high waste vulnerability contract actions.

Within 60 days after the effective date of this letter the head of each agency shall report to OFPP the action taken to implement the provisions of this Policy Letter. The report shall describe the advance procurement planning process, the procedures to require lead time and cut-off dates, the review procedures, and the implementation of the contract log.

For further information with respect to this policy directive, contact Mr. Jack Nadol, Assistant Administrator for Procurement Practices, telephone 395-3455.

EFFECTIVE DATE: This Policy Letter is effective August 28, 1981.

CONCURRENCE: This letter has been concurred in by the Director of OMB.

Donald E. Sowle

ENCLOSURE (C)

FFICES OF INSPECTOR GENERAL ND HOTLINE NUMBERS

Department of Agriculture Room 247E, Administration Building Washington, DC 20520	(800) 424-9121
U.S. Agency for International Development 21st and Virginia Avenue Room 5644, New State Building Washington, DC 20523	(FTS) 235-3528
Department of Commerce 14th and Constitution Avenue, N.W. Room 7898-C Washington, DC 20230	(800) 424-5197 (202) 377-2495
Department of Defense The Pentagon, Room 1E-482 Washington, D.C. 20310	(800) 424-9098 (202) 693-5080 (Autovon) 223-5080
Department of Education 330 C Street, S.W. Room 4006, Switzer Bldg. Washington, D.C. 20202	(800) 646-8005 (202) 755-2770
Department of Energy 1000 Independence Avenue, S.W. Room 5D-039, Forrestal Bldg. Washington, D.C. 20585	(FTS) 252-4073 (202) 252-4073
Environmental Protection Agency 401 M Street, S.W., Room 2714 Washington, D.C. 20460	(800) 424-4000 (202) 382-4977
General Services Administration 18th and F Streets, N.W., Room 5340 Washington, D.C. 20405	(800) 424-5210 (FTS) 566-1780 (202) 566-1780
Department of Health and Human Services 330 Independence Avenue, S.W. Room 5250, North Building Washington, D.C. 20201	(800) 368-5779 (800) 638-3986 (MD. Only) (301) 597-0724
Department of Housing and Urban Development 451 7th Street, S.W., Room 8256 Washington, D.C. 20410	(FTS) 472-4200 (202) 472-4200
Department of Interior 18th & C Streets, N.W., Room 5239 Washington, D.C. 20240	(800) 424-5081 (202) 343-2424

Department of Justice **Counsel, Office of Professional Responsibility** **Room 4306, Main Justice Building** **Washington, D.C. 20530**	(202) 633-3365
Deputy Assistant Attorney General Room 1111, Main Justice Building Washington, D.C. 20530	
Department of Labor 200 Constitution Avenue, N.W., Room S1303 Washington, D.C. 20210	(800) 424-5409 (202) 357-0227
National Aeronautics and Space Administration 400 Maryland Avenue, S.W., Room 6075 Washington, D.C. 20546	(800) 424-9183 (202) 755-3402
Office of Personnel Management 1900 E Street, N.W., Room 7558 Washington, D.C. 20416	(FTS) 632-4423 (202) 632-4423
Small Business Administration 1441 L Street, N.W., Room 1018 Washington, D.C. 20416	(FTS) 653-7557 (202) 653-7557
Department of State 2201 C Street, N.W. Room 6821, New State Building Washington, D.C. 20520	(202) 632-3320
Department of Transportation 400 7th Street, S.W., Room 92110 Washington, D.C. 20590	~~(800) 424-9071~~ (202) 755-1855
Department of Treasury 15th & Pennsylvania Avenue, N.W., Room 2412 Washington, D.C. 20220	(202) 535-6150
Veterans Administration 1425 K Street, N.W. Room 1100, McPherson Building Washington, D.C. 20420	(800) 368-5899 (FTS) 389-5394 (202) 389-5394

THER AGENCY HOTLINE NUMBERS

General Accounting Office	(800) 424-5454 (202) 633-6987
Merit Systems Protection Board	(800) 872-9855

Mr. WOLF. Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Coleman.

Mr. COLEMAN. Thank you, Mr. Chairman.

Mr. Miller, I think one of the statements that you made needs correcting. I think you suggested that what happened to the IRS was because the Congress did not pass a supplemental. I think that that is in the lexicon I hear from this Administration all the time. I think it needs to be corrected here. I hope that you will at least agree with me that the problem with IRS was that the President and the Administration did not listen to two subcommittees, one in the Senate and one in the House, nor to Mr. Egger who was sending out the alarm in 1985 that they needed more funds. In fact, those committees presented that finding to the President and the bill was vetoed for whatever reason. I just do not think you can blame what occurs to IRS this year or in this fiscal 1987 on our failure to pass the supplemental.

We have been there before. We had the funds. We had an additional 200 million dollars that had to be taken out to get the President to sign the continuing resolution.

So I hope that the IRS's problems are not going to be blamed on something we did or did not do in the Congress.

Mr. MILLER. Your point is a reasonable one. The concerns we had with the bill and the reason for the President's veto were more than just the question of the IRS funding.

Mr. COLEMAN. Yes.

Mr. MILLER. It was our feeling then that additional IRS funding was not justified and we later changed our minds. Obviously if we wanted the money that would have been an easy way to have gotten it. The reason for our appraisal at that time was the monies were not necessary and also we had other policy concerns with that appropriation.

Mr. COLEMAN. In 1987 you request a total of 580 FTEs. How many FTEs are presently on board?

Mr. MILLER. We are currently 60 down from authorized levels of fiscal 1986.

Mr. EISENACH. We have about 530 on board today.

Mr. COLEMAN. Five hundred thirty?

Mr. EISENACH. Yes, sir.

Mr. COLEMAN. The authorized level was how many?

Mr. EISENACH. Five hundred ninety-four.

Mr. COLEMAN. Five hundred ninety-four.

Mr. EISENACH. Yes.

Mr. COLEMAN. The authorization for the Office of Information and Regulatory Affairs has been passed by the House, the Paperwork Reduction Act, but not by the Senate. Therefore, of course the Office of Information and Regulatory Affairs pertaining to review and clearing all proposed regulations has not been authorized.

You are requesting $5.408 million or an increase of $282,000 over the amount that was given last year for that office. Could you explain to me why this committee should not prevent any funds from being used for the function of reviewing and clearing all proposed regulations.

Mr. MILLER. Well, that is a reasonably Draconian way of imposing an incentive on authorizing committees to get together and to get something done. I would just assure you that we are very interested in getting OIRA reauthorized, but I think, again, some of the things that the OIRA does, specifically review of regulations, are with the inherent power of the President derived from the Constitution. Some of the other specifics, like the paperwork reduction activities and the computer procurement oversight activities, et cetera, would not go forward if that—

Mr. COLEMAN. This committee agrees with that statement.

Mr. MILLER. Yes.

Mr. COLEMAN. We voted for the funds.

Mr. MILLER. Right.

Mr. COLEMAN. But I hope you understand that in terms of the regulatory reviewing and clearing of proposed regulations, and final regulations, that that is not contemplated in the bill that the House passed. We have not had a bill from the Senate come to the House so that we can go to conference. It is the way things work in this government that if it is not authorized you are not allowed to do it.

Mr. SKEEN. Will the gentleman yield?

Mr. COLEMAN. If you will just give me a second.

I know, in fact, that you have an executive order, but that does not authorize it. Constitutionally we know it does not authorize it. All I wanted to say to you was why should we not take that view until we have an authorization? We are all looking for places to cut, and I am one Member who is doing that.

Mr. SKEEN. Would the gentleman yield?

Mr. COLEMAN. I will be happy to yield.

CUSTOMS

Mr. SKEEN. I do not mean to inject myself into a dialog here, but I would like to remind you that one of our favorite agencies has not been authorized either, and that is Customs.

Mr. COLEMAN. We did finally authorize them.

Mr. SKEEN. They are not authorized.

Mr. COLEMAN. It was authorized in the reconciliation bill.

Mr. SKEEN. Well, we can——

Mr. COLEMAN. I will get to that question. I have a problem with OMB actions in terms of Customs, as the chairman does.

Mr. SKEEN. They cannot authorize them.

Mr. COLEMAN. It is authorized in the continuing resolution, Mr. Skeen.

Mr. SKEEN. We will take that argument up, but I believe you are wrong.

Mr. COLEMAN. We will discuss that.

Mr. SKEEN. You bet.

Mr. COLEMAN. We did authorize the number of FTEs in the CR.

I had some questions relative to the Treasury proposals for Customs user fees. Have you reviewed the Treasury proposals?

Mr. MILLER. Yes.

Mr. COLEMAN. I have been told that some in Treasury would like to create some kind of a trust fund funded by those user fees and in turn would finance the operations of the Customs Service.

Are you aware of such a proposal and do you support the earmarked user fees?

Mr. **Miller**. I have heard such a proposal. I do not support the notion of a trust fund for the Customs Service.

Mr. **Coleman**. What role will OMB play in the final version of the user fee package?

Mr. **Miller**. Well, we have a package included in the President's budget in terms of the policies. I do not know whether the legislation itself has been submitted. I will have to get back to you on the record for that, as to what stage that is in.

[The information follows:]

In the 1987 Budget, the Administration is continuing to seek to recover all the costs incurred by the Customs Service in conducting border processing activities.

In 1986, certain Customs Service user fees were authorized in the Consolidated Omnibus Budget Reconciliation Act (H.R. 3128). That legislation imposed user fees for Customs border processing on most passenger and other types of conveyance.

The Administration continues to support the Customs Service user fee legislative proposal that was transmitted early in the 99th Congress. This legislative package would impose user fees for Customs Services as included in H.R. 3128 and impose fees on cargo processing activities. In the 1987 Budget, the Administration estimates $520 million will be deposited into the General Fund of the Treasury from Customs Service user fees.

The Administration does not support the creation of a revolving fund to which Customs Service user fee revenue would be deposited. It is extremely important for the Administration and the Congress to maintain control of the Customs Service budget through the annual appropriations process.

Mr. **Coleman**. One of the reasons that was given in 1985 for the President's dislike of the FY86 Treasury appropriations bill I referred to earlier was because of postal revenue foregone or subsidized for nonprofit or in-county mailings. In the past the OMB has stated that legislation would be proposed to protect nonprofits without the need for revenue foregone.

Are you planning to submit such legislation?

Mr. **Miller**. I would have to get back to you on the record on that.

Mr. **Coleman**. I wanted to make the statement that the Postal Service cannot subsidize any mail with the revenues of other mail under current law. So we are going to require legislation if that is, in fact, the intent, as I understand the statement made by your predecessor. If you would check for the record, I would be most appreciative.

Mr. **Miller**. I would be glad to do that.

[The information follows:]

Revenue Forgone

The legislation that supports the 1987 revenue forgone budget proposal was submitted to the Congress on June 18, 1985. Basically, the 1987 Budget proposal reproposes the 1986 Revenue Forgone proposal which would reform the postal subsidy program. The reforms would:

1. Terminate postal subsidies for commercial and profit-making activities;
2. Change the method of allocating institutional costs so that the subsidized mailers would no longer pay a disproportionate share of overhead; and
3. Shift the burden of the funding of the revenue forgone appropriation from the American taxpayer to the ratepayer—the direct user of the mail.

Mr. **Coleman**. We had a discussion at the first committee hearing on the Administration's proposed rescission of the $30 million for the Emergency Immigration Education Act.

I was informed that the Administration has testified before the Labor, HHS and Education Subcommittee that the Emergency Immigration Education Act interfered with the bilingual education program.

Mr. **Miller**. I do not know of the details on that, no.

Mr. **Coleman**. Okay. In this budget, OMB is asking for an increase of $529,000 for personnel compensation. Is that the correct number?

Mr. **Miller**. You said $529,000?

Mr. **Coleman**. For personnel compensation, including funding of 60 positions which are vacant but authorized.

I think you have indicated there are about 64 in your testimony.

Mr. **Miller**. The number is much higher than $529,000.

Mr. **Eisenach**. That may be the increase.

Mr. **Coleman**. That is the increase.

Mr. **Miller**. That sounds roughly correct.

[The information follows:]

Our FY–87 requested increase for full time permanent compensation over the FY–86 Gramm-Rudman sequester level is $1,287,000. Of the increase, $646,000 is for restoration of one half of the annualized effect to the President's proposed 5% pay cut that never materialized. $314,000 is for promotions and within grade increases and the remaining $327,000 would be used to fill some of our current vacancies.

Mr. **Coleman**. Okay. With respect to the issue relating to the Office of Information and Regulatory Affairs and the problem in trying to incorporate their ability for regulatory review and clearance into the act, one of the things that needs to be stated in terms of the President's authority in these areas is that he has control currently, and I hope you would agree with us, over agency regulations through the power of either retaining or dismissing agency heads. I think that that goes to the very issue that I think has been raised.

Mr. **Miller**. Well, basically what OIRA does under the Executive Orders 12291 and 12498 is review what the regulatory agency proposes in light of the President's principles so the President does have information about the performance of the regulatory head—whether the regulatory head is, in fact, engaged in regulating within the discretion afforded by law consistent with his policies.

Mr. **Coleman**. That is right. He can fire them if he does not like what they are doing.

Mr. **Miller**. That is right.

Mr. **Coleman**. Okay. Thank you, Mr. Chairman.

Mr. **Roybal**. Thank you, Mr. Coleman.

Mr. Miller, I would like to return to the matter of Customs for just a moment. OMB has agreed that Customs be reduced by 1556 positions. That is correct, is it not?

Mr. **Miller**. Subject to check, yes.

[The information follows:]

The 1987 President's Budget for the Customs Service provides for direct personnel levels of 12,494 FTE. This direct personnel level is 1,548 positions less than the total position level approved by the Congress in 1986.

It is important to note that the current on-board personnel levels for the Customs Service are considerably lower than the totals authorized by the Congress in 1986. In addition, the Customs Service anticipates meeting the personnel ceiling requirements by developing a selective hiring policy and achieving productivity increases through advanced automation and operational efficiencies gained through streamlining port operations.

Mr. **Roybal**. Now, I think we all realize that Customs is a revenue producing agency, that we spend approximately $700 million a year on Customs, but that in return we get approximately $12.7 billion which is a very excellent return. That is one of our revenue producing departments, that and the Internal Revenue Service, which we will get to in just a moment.

Insofar as Customs is concerned, we are disturbed about the fact that those positions are being recommended to be reduced and that service in various ports of entry will suffer the consequences. In Los Angeles, for example, a Customs facility at an airline terminal satellite would be closed. Adequate Customs service is needed for an expanding economy. Otherwise, expansion in the economy that would be forthcoming in the near future might be curtailed. So the consequences that will be suffered will definitely mean less money coming into the Treasury of the United States.

But what concerns me more than anything else is the matter of narcotics. I think that that is a disgraceful thing we are doing, letting this junk come through as easily as it does.

The other problem is terrorism. OMB recommended a $3 million reduction in the budget that was earmarked for anti-terrorism; that is, in the U.S. Secret Service budget. It is very hard to understand the rationale behind it. Can you try to explain it?

Mr. **Miller**. Well, there are other ways in which we combat terrorism. Let me say, however, I have no doubt that should it develop that the resources available to fight terrorism and to protect our citizens are insufficient, I know the President of the United States would be the first one to make the point that we will be up here immediately with a supplemental request.

On the question of the interdiction of drugs, we have asked for $146 million more this year for the whole program. As you know, it involves the Justice Department, it involves the prosecuting people, to reduce sales domestically, it involves interdiction by the Coast Guard, and it involves State Department efforts to reduce the production of these illicit drugs.

It is, as you say, a very difficult problem as to how we can best use those resources. Frankly, we have frequent meetings in the Roosevelt Room and, in fact, we made a presentation to the President just the other day on the effort. We, of course, are vitally involved in the budget of that whole effort and the analysis of the relative components and division of resources among them.

I am not saying that we have all the answers or that we won't come up here next year saying we think a little more money in Customs is necessary, a little less in Justice prosecution or more money for the State Department, whatever, wouldn't be the appropriate mix. We learn and conditions change just as they do with respect to terrorism. We all hope and pray that we will not be faced with additional terrorism, but that is always a possibility.

Mr. **Roybal**. Well, that is the matter then of greatest concern. If we take the money out, when the time comes we are not prepared to deal with it. It seems to me that an agency like the Secret Service should not be deprived of that money.

Mr. **Miller**. The Secret Service is not the only agency involved in terrorism.

Mr. ROYBAL. I understand that, but I think we need all the help we can get in both the interdiction of narcotics and in terrorism.

Mr. MILLER. I understand, for example—the reason I raise this is that Chairman Abdnor raised this with me in the other body a couple weeks ago—Is there enough money in the Secret Service to account for the fact that we will have presidential candidates running for office in 1987? And the answer is, yes, we estimate protection for 16, that is what I have been told, 16 presidential candidates. If it appears there would be more, then we would ask for a supplemental.

OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Mr. ROYBAL. Now, the Office of Information and Regulatory Affairs was specifically authorized an appropriation in prior years, but there is no current authorization for that office now. Since there is no authorization, why has OMB requested $5.5 million for its operation in 1987?

Mr. MILLER. Well, two reasons: One is a hope that OIRA will be reauthorized this year; secondly, a recognition of the facts of life and that many agencies are continuing to go forward when not authorized with an appropriation that essentially authorizes the appropriation of monies for the agency.

Mr. ROYBAL. The truth of the matter is that it is not authorized; and if we put it into the bill and take it on the Floor, anybody can call a point of order on it.

Mr. MILLER. Right, I understand.

Mr. ROYBAL. There are at least two members of Congress that have already indicated in writing that they would be prepared to do that.

I understand that these same two members have been in communication with OMB with regard to this particular problem.

Mr. MILLER. Yes.

Mr. ROYBAL. I point that out because I want you to know that this committee will have problems with that.

I am asking these questions because, again, you have an 11 percent increase and then you decrease Customs and you decrease anti-terrorism, but you add $5.5 million for something that is not even authorized and I——

Mr. MILLER. No, we retain the 5 million.

Mr. ROYBAL. I understand, but it is not authorized. Therefore, you are asking for $5.5 million. That is not authorized.

Mr. MILLER. Yes.

Mr. ROYBAL. Even though technically it is a retention.

Mr. MILLER. Right.

Mr. ROYBAL. All right. It is hard to understand.

Now, before asking my next question—I think that will probably complete my 10 minutes—I would like to quote Section 3404 of the Paperwork Reduction Act that says under (g) that "The functions of the director shall include promoting the use of automatic data processing and telecommunications equipment by the federal government to improve the effectiveness of the use and dissemination of data in the operation of federal programs."

That is the responsibility.

Now, last year IRS had a data processing problem of major proportions. There was an almost total breakdown in the processing system and many thousands of Americans did not receive their refunds for long periods of time. It is our belief that if OIRA had been doing the job the act said it should be doing rather than spending such a disproportionate time reviewing regulations that they may have prevented this problem at IRS from occurring.

Now the question: To what extent did OIRA review the IRS data processing program prior to the breakdown in the system?

Mr. MILLER. I do not know. I will be glad to get back to you. [See attached.]

[The information follows:]

Office of Information and Regulatory Affairs staff has worked closely with Office of Management and Budget budget examiners in reviewing Internal Revenue Service budget proposals both as they deal with short range and longer term information technology expenditures. Our emphasis, from an information policy perspective, has been primarily on the longer term or strategic initiatives such as the Tax Systems Redesign and on the extent to which interim upgrades planned for the Service Centers build rationally toward a workable long term system.

When the magnitude of the operational problems in the 1985 filing season came to light, OIRA did assist in reviewing IRS proposals for operational enhancements for the 1986 filing season.

Mr. MILLER. My understanding is that the breakdown was more a function of personnel than it was equipment.

Mr. ROYBAL. But if it was personnel, then the additional $340 million is not needed; is that what you are saying?

Mr. MILLER. No.

Mr. ROYBAL. Because the personnel were already paid for even though it was a breakdown of personnel?

Mr. MILLER. Part of the breakdown was a shortage, insufficient personnel.

Mr. ROYBAL. All right.

Mr. MILLER. Rather than a failing of the computers.

Mr. ROYBAL. What you would do then with the $340 million that finally was requested in the supplemental is get the necessary personnel to do the job?

Mr. MILLER. Yes.

Mr. ROYBAL. Why did OIRA fail to recognize some of the problems involved in the IRS acquisition program?

Mr. MILLER. Again, Mr. Chairman, what I am suggesting is—my understanding, again subject to check, is the difficulty was with insufficient personnel rather than an ADP problem, but I will be glad to get back to you as to the monitoring and analysis of that.

[The information follows:]

As indicated above, OIRA did not review the interim upgrade of the Service Centers for the 1985 filing season. The budget examiners who reviewed it were concerned about the need for careful testing of the equipment and so advised IRS. Nonetheless, it remains our view that the problems in the 1985 filing season were as much a result of personnel and communications problems as computer system problems.

Mr. ROYBAL. Would you submit that in writing to the committee?

Last year you sent a letter to both the House and the Senate urging a cutback in IRS funding for 1986. Just a few months later your office requested an urgent supplemental for IRS that was almost the same amount that just a few months earlier you had urged be cut.

Mr. MILLER. Yes.

Mr. ROYBAL. I would like to know why the change of position.

Mr. MILLER. One of the things, of course, Mr. Chairman, is that the President's policy he gave to us was to hold within the 302(b) allocations and at the margin we were looking at things where there had been increases over what the President's budget had been. But I would be glad to respond in writing to you, a reconciliation essentially of those contrasting views.

[The information follows:]

RECAP OF OMB POSITIONS ON IRS FUNDING

During consideration of H.R. 3036, the 1986 Treasury/Postal Appropriations bill, the Administration's position statement listed as one of the objectionable items an increase of $61 million for the Internal Revenue Service (IRS). This increase was reduced to $17 million in the Continuing Resolution.

As I have stated before, there were other objectionable items, such as OPM regulations and Postal Service funding, which prompted the veto. The IRS was not mentioned anywhere in the President's veto message. This was in part because of a growing awareness that some supplemental funds would be needed, but the magnitude was not known at that time.

As late as last fall, OMB believed that the problems of the 1985 filing season were a one-time only occurrence. We were expecting that tax processing would return to normal—and in fact should be even more efficient—once the problems were resolved. We did not anticipate the length of time and level of resources it would take to reduce the large backlogs which developed in certain service center functions.

During our discussions with the IRS during OMB's fall review process, it became apparent that supplemental funds would be necessary in order to ensure a smooth filing season for 1986—an objective we all established as a top priority. By waiting to include the supplemental in the President's budget, we were able to get the Commissioner's most current estimate of additional needs for 1986 which, as it turned out, were considerably higher than the earlier estimates.

Mr. ROYBAL. I see that my time has expired.

Mr. Skeen.

Mr. SKEEN. Thank you, Mr. Chairman.

Not to continue the debate and with all due respect to my friend from Texas down there, this debate about authorization ought to probably be set in some kind of precedent because we have not authorized Customs, to my information, over the last three years. Neither have we authorized the Mint nor the FEC. Every time we go in for appropriation or any time we have a bill or reconciliation or the rest, it had to be done through the Rules Committee on a waiver. So I think that the argument because the authorization lapsed lacks a lot of punch in that regard because we are not getting around to some of the authorizing work we should do. I will yield.

Mr. COLEMAN. The point is it was never authorized, OIRA was not, at least in terms of conducting the reviews of the regulatory authority. All I am saying is that since it is not authorized, that did not stop us from funding it last year.

Mr. SKEEN. Right.

Mr. COLEMAN. Nonetheless, there has never been a funding specifically by line item by this committee or the Senate committee for that specific function. I think that is the problem that we continue to get into. You probably have as a member of this committee received a letter from the chairman of the Government Operations Committee. He sent it to us last year. He asked us not to fund OIRA. We nonetheless funded it because we think there are important functions that it has, and we were hoping to get an authorization. We still did not get it, as Mr. Skeen knows, but that did not faze us at all. But there is a question raised by jurisdictional committees that are supposed to pass authorization bills whether or not OIRA is acting within the scope of its original authority.

Mr. SKEEN. Reclaiming my time, if the jurisdictional committees are going to raise hell about this, then they ought to get off their stump and start doing things.

Mr. COLEMAN. The House committees, Mr. Skeen, have passed the bill.

Mr. SKEEN. Nevertheless, if we are going to sit here and argue about this——

Mr. COLEMAN. I cannot speak for the Senate. I do not know where they are.

Mr. SKEEN. Nobody else can that I know of over there either. But we will let them do their own speaking. I think we ought to clear up, if this is going to be a precedent, whether or not we are funding these agencies.

There is one other thing. During the debate last year you were not in charge of the operation, but we had a lot of missignals or miscommunication. We got into the debate on conference committee as a result of the work done on our appropriations for IRS, Customs and some of the rest and revenue foregone. They were the three sticking points on our appropriations bill. We had no indication from the Administration or from OMB, at that time, that we had any real problem. We tried to work out the differences.

It was the very day of debate of the conference report which is a late date to be bringing anything in.

Mr. MILLER. Yes.

Mr. SKEEN. So I think it caused a lot of problems. I appreciate the communication we have had since that time because it was recognized that it was a bad move. So I would just like to urge that if you get something on it, let us know as early as you can——

Mr. MILLER. Right. It is only fair.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Coleman.

Mr. COLEMAN. Mr. Chairman, I would just like to, if I could, place into the record the views and estimates on matters under the Government Operations Committee's jurisdiction, if that is not objectionable.

Mr. ROYBAL. Without objection.

[The information follows:]

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MAJORITY—225-5051
MINORITY—225-5074

March 21, 1985

The Honorable William H. Gray, III
Chairman, Committee on the Budget
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to the requirements of section 301(c) of the Congressional Budget and Impoundment Control Act of 1974, P.L. 93-344, and in accordance with the rules of the Committee on Government Operations, I am submitting the Committee's views and estimates on items in the President's budget for fiscal year 1986 which relate to matters within the jurisdiction of the Committee. I hope that this Committee's views and estimates will assist the Budget Committee and the Congress in achieving fiscal goals and meeting our responsibilities to the nation through formulation of a realistic and equitable budget for fiscal year 1986.

With every good wish, I am

Sincerely,

Jack Brooks

JACK BROOKS
Chairman

VIEWS AND ESTIMATES ON MATTERS UNDER GOVERNMENT OPERATIONS COMMITTEE'S JURISDICTION

1. General Accounting Office.

In recognition of the constitutional separation of powers among the three branches of government, under 31 U.S.C. 1105(b), estimated expenditures and proposed appropriations for the Legislative and Judicial Branches are to be "submitted to the President before October 16 of each year and included in the budget by the President without change" (emphasis added). Despite this requirement of law, the President's FY 1986 budget includes a recommendation for a reduction of 10 percent in the 1986 funding levels for the Legislative Branch which were submitted to the President. No such change is made in the figures submitted by the Judiciary Branch.

In addition to violating the spirit if not the letter of 31 U.S.C. 1105, the President's proposal for a 10 percent reduction in funding of Legislative Branch activities, if enacted, could have serious consequences on the operations of the General Accounting Office.

According to figures supplied by the Budget Committee, GAO's appropriation represents a major portion of the discretionary spending within the Legislative Branch. A 10 percent reduction in overall Legislative Branch expenditures thus would have a major impact on GAO's ability to function as a resource for audit and investigation of Executive Branch activities.

The Committee's Subcommittee on Legislation and National Security is preparing to hold oversight hearings on the operations of the GAO. These hearings have been prompted in part by the concerns expressed by numerous committees of the House over the timeliness, accuracy and comprehensiveness of GAO's work. A solution to this problem might be to increase the in-house audit and investigative capabilities of the committees of the Congress rather than increasing the staffing and funding for GAO.

2. Office of Management and Budget--Office of Information and Regulatory Affairs.

The Office of Information and Regulatory Affairs (OIRA) was established by the Paperwork Reduction Act of 1980 (P.L. 96-511) to carry out the responsibilities for the information management framework established by the Act. Authorization for OIRA expired on September 30, 1983. During the 98th Congress, the Committee reported, and the House passed, H.R. 2718, to extend authorization for OIRA through FY 1986. No further action on H.R. 2718 took place during the 98th Congress.

The President's budget proposes funding for information and regulatory affairs for FY 1986 in the amount of $5.3 million. Unless OIRA is reauthorized in the near future, the Committee suggests that OMB's budget should be reduced by this amount.

3. Office of Management and Budget--Office of Federal Procurement Policy.

The Office of Federal Procurement Policy is responsible for "promoting economy, efficiency, and effectiveness in the procurement of property and services by and for the Executive Branch." Budget authority and outlays for OFPP for 1985 are estimated at $1.63 million and $1.65 million respectively.

The President's budget states that legislation will be proposed to abolish OFPP and integrate its functions into the structure of OMB. The stated rationale for this proposal is "to reduce administrative overhead and...consolidate responsibility for all Government-wide management improvement activities in a single organization." Inasmuch as the savings which are proposed to be achieved by this action are not reflected specifically in the President's budget, the Committee is not prepared at this time to take a position on the proposed abolishment of OFPP.

4. National Archives and Records Administration.

Under Public Law 98-497, the National Archives and Records Service is to be separated from the General Services Administration and established as an independent National Archives and Records Administration, effective April 1, 1985. The Administration's FY 1986 budget proposal calls for funding of the newly-independent agency at a level of $99.4 million in budget authority and $104 million in outlays. This compares to an estimated $100.6 million in budget authority and $94.9 million in outlays for FY 1985.

While the President's budget contains upward adjustments to cover the increased cost of goods and services and for increased funding of preservation activities, this is offset by a proposed decrease of over $4 million in funds available for grants by the National Historical Publications and Records Commission. Under Public Law 98-189, which was signed by the President on November 30, 1983, NHPRC was authorized $4 million in FY 1984 and 1985 and $5 million for the succeeding three fiscal years.

5. Advisory Commission on Intergovernmental Relations.

The Advisory Commission on Intergovernmental Relations was established in 1959 as a national center for continuing study of the operation of the Federal system and how it might be strengthened. The President's budget proposes funding of ACIR at $2.06 million in budget authority for FY 1986.

During the 98th Congress, the Committee's Subcommittee on Intergovernmental Relations and Human resources undertook an extensive oversight review of the operations of ACIR, including an analysis of the quality of ACIR's reports during the past five years. The Committee's report on this review (H. Rept. 98-1140) recommended numerous changes in ACIR's operation as well as expansion of its membership. Legislation effecting these changes was adopted by the House as H.R. 6259 and the Senate as S. 1052, but was not resolved before the adjournment of the 98th Congress.

6. Revenue Sharing.

Under the Local Government Fiscal Assistance Amendments of 1983, Public Law 98-185, the general revenue sharing program of assistance to local governments was extended as an entitlement for fiscal years 1984, 1985 and 1986. The President's budget proposes terminating the general revenue sharing program at the end of fiscal year 1985. Such action, which would require legislation amending P.L. 98-185, would result in savings of $4.57 billion in budget authority and $3.14 billion in outlays for fiscal year 1986.

The Committee's Subcommittee on Intergovernmental Relations and Human Resources has undertaken a series of hearings to assess the impact of early termination of revenue sharing on local governments and the essential services such as police, fire, public works and health care that those communities provide. Pending completion of these hearings, the Committee is not prepared to comment on proposed early termination of the program or reauthorization of the program after the expiration of the current entitlement period.

7. Off-Budget Items.

The President's budget proposes including in budget totals the authority and outlays of entities whose transactions previously have been excluded from budget totals under provisions of law (off-budget entities). According to the budget, these programs include Government financing of rural electric and telephone systems administered by the Department of Agriculture, account transactions of the Strategic Petroleum Reserve, the Federal Financing Bank, Postal Service activities, activities of the United States Railway Association, and activities of the United States Synthetic Fuels Corporation.

Converting these programs to on-budget status will require legislative action and may require amendment of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344). The Budget Committee estimates that bringing these programs on-budget may make a difference of as much as $50 billion in aggregate outlay totals by FY 1990.

8. Deficit Reduction Act Report.

Section 2903 of the Deficit Reduction Act of 1984 (P.L. 98-369) required the President to review recommendations for management improvement and cost control opportunities, including those made by congressional committees, executive and legislative branch agencies, educational and research organizations, and public and private bodies, task forces, councils, panels, and study groups. He then was to report to Congress with a list of the recommendations reviewed, the actions which the President proposes to take or has taken, and the amount of cost savings expected to result from implementation of those recommendations in fiscal years 1985, 1986, and 1987.

The President submitted his response to this requirement in an OMB addendum to the budget entitled "Management of United States Government--Fiscal Year 1986." Instead of responding to the comprehensive requirement described above, the OMB submission concentrates on the recommendations of a single entity, the so-called "Private Sector Survey on Cost Control." The rest of the report presents a management overview but does not refer to any other specific recommendations as required by P.L. 98-369. OMB either ignored or overlooked numerous other studies in this area, by public and private organizations alike.

It should be noted that while the Deficit Reduction Act was under consideration, the conferees specifically expanded the coverage of the provision which became section 2903 in order to avoid over-reliance on the recommendations of any specific entity or study. In the case of the group which is discussed to the exclusion of all others in the OMB management report, the reason the Congress expanded the requirement becomes clear. A number of recent objective studies have cast serious doubt on the methodology employed, and thus on the validity of the conclusions reached, by the organization featured in the OMB response.

The Administration's failure to comply with the requirements of section 2903 denies Congress the opportunity to receive the benefit of the Administration's views on a wide range of well-researched cost control studies. As a result of the Administration's failure to provide a comprehensive overview of recommendations in the area of management improvement and cost control opportunities, as required by section 2903 of the Deficit Reduction Act, it is impossible for the Committee to comply with the requirements of section 2904 of that Act.

Mr. **Coleman**. It does give us some history of how we got here and what, in fact, they have done.

I would like to include the Executive Order 12498, if I could, for the record at this point.

Mr. **Roybal**. Without objection.

[The information follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 10, 1985

BULLETIN NO. 85-9

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: The Administration's Regulatory Program--1985

1. Purpose. This Bulletin establishes guidelines and procedures for developing and publishing the Administration's Regulatory Program for 1985. The information required by this Bulletin will be used to create a statement of the regulatory policies, goals, and objectives of each agency covered by this Bulletin, and a description of the Administration's significant regulatory actions underway or planned, for the Reporting Year beginning in April 1985. Development of this regulatory policy document is intended to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and congressional understanding of the Administration's regulatory objectives.

2. Background. On January 4, 1985, the President issued Executive Order No. 12498, Regulatory Planning Process, and a Memorandum for the Heads of Executive Departments and Agencies entitled Development of Administration's Regulatory Program, pursuant to which the Administration will develop and publish a Regulatory Program for each year. The Order also delegated to the Director of the Office of Management and Budget (OMB) authority to take such actions as may be necessary to implement this process.

This process is intended to complement the existing regulatory planning and review procedures of the executive branch, including the procedures established by Executive Order No. 12291.

The Regulatory Program will cover "significant regulatory actions," that are defined as certain actions for which review under Executive Order No. 12291 is anticipated during the Reporting Year, and certain regulatory actions and decisions that occur prior to the initiation of rulemaking procedures, including actions taken to consider whether to initiate rulemaking, requests for public comment, and the development of documents that may influence, anticipate, or could lead to the commencement of significant rulemaking proceedings.

The Executive Order directs the head of each executive agency to ensure that all their regulatory actions, including reassessments of existing regulations, are consistent with the goals of the agency and of the Administration, and are appropriately implemented. To assure consistency with the goals of the Administration, the head of each agency is to adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, and the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, Reagan Administration Regulatory Achievements.

3. Authority. The Budget and Accounting Act of 1921, as amended (31 U.S.C. Chapter 11); the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order No. 11541, as amended (Prescribing Duties of the Office of Management and Budget and Domestic Council, 35 Fed. Reg. 10737, July 2, 1970); Executive Order No. 12291 (Federal Regulation, 46 Fed. Reg. 13193, February 19, 1981); Executive Order No. 12498 (Regulatory Planning Process, 50 Fed. Reg. 1036, January 8, 1985); and Memorandum for the Heads of Executive Departments and Agencies entitled Development of Administration's Regulatory Program, dated January 4, 1985.

4. Coverage. All agencies subject to Executive Order No. 12498 are subject to Sections 1(b) and 1(c) of that Order. Pursuant to Section 1 of the Order, the following agencies, to the extent they are subject to Executive Order No. 12291, are hereby made subject to Sections 1, 2, 3, 4, and 5 of Executive Order No. 12498 and the provisions of this Bulletin:

Department of Agriculture
Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
General Services Administration
Office of Personnel Management
Small Business Administration
Veterans Administration

5. Definitions.

a. A "prerulemaking action" is any important action taken to consider whether to initiate, or in contemplation of, rulemaking; publication of advance notices of proposed rulemaking and all similar notices, publications, and requests for public comment; and development or dissemination of draft guidelines, policy proposals, strategy statements, and similar documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date.

b. A "rulemaking action" is the publication of any notice of proposed rulemaking, final rule, or other statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy.

c. A "significant regulatory action" is any prerulemaking action or rulemaking action that would be a step toward adoption of a rule that is or would be:

(1) a "major rule" as defined by Section 1(b) or 3(b) of Executive Order No. 12291;

(2) a priority of the agency head;

(3) subject to a statutory or judicial deadline;

(4) of unusual interest to other Federal agencies;

(5) of unusual public interest;

(6) likely to establish an important new policy or legal precedent; or

(7) designated by the Director of the Office of Management and Budget to warrant review as a significant regulatory action.

d. "Reporting Year" means the 12-month period from April 1, 1985 to March 31, 1986.

6. Agency Submission of Draft Regulatory Program for the Period from April 1, 1985 through March 31, 1986.

a. Each agency head shall submit a draft overview of the regulatory policies, goals, and objectives that it proposes to pursue during the Reporting Year. This overview should discuss how these policies, goals, and objectives are consistent with the Administration's regulatory principles, as stated in Section 2 of Executive Order No. 12291, and the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, Reagan Administration Regulatory Achievements, and include a discussion of the most important regulatory actions it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules. The overview should include the regulatory policies, goals, and objectives of the agency as a whole, as well as of the major subjects selected as specified in subsection b.

b. Each agency head shall also complete and submit information in the Format attached to this Bulletin for each significant regulatory action that the agency proposes to pursue during the Reporting Year. In submitting this information, the agency shall divide its significant regulatory actions into major subjects that are most closely related to the programs of the agency. For example, the major subjects may be divided by program office, authorizing statute, regulatory authority, or subject area. The agency shall then further categorize all such significant regulatory actions as follows:

(1) "First Administration review" means that the significant regulatory action has not been previously reviewed by the Administration, for example, (i) pursuant to deliberations of an appropriate Cabinet Council, (ii) under Executive Order No. 12291, or (iii) under Executive Order No. 12498.

(2) "Previously reviewed: not changed" means that the specific significant regulatory action has been reviewed by the Administration, as above.

(3) "Previously reviewed: changed" means, with respect to a significant regulatory action that has been previously reviewed by the Administration, as above, that additional relevant information is available; that there has been (i) a material change in either the substance of the action or the agency's plans for pursuing it, or (ii) subsequent actions, since the action was previously approved; or that, in the case of a rulemaking, it will progress to a new regulatory stage (e.g., from a notice of proposed rulemaking to a final rule).

c. The agency head shall further divide significant regulatory actions according to whether the next action that the agency expects to take during the Reporting Year is a: (1) prerulemaking action; (2) publication of a notice of proposed rulemaking; or (3) publication of a final rule.

d. The agency head shall separately describe each significant regulatory action in the Format attached to this Bulletin (categorized as specified in subsections b and c). The agency head shall precede all of these individual descriptions with a table of contents, listing each significant regulatory action by title, according to the categories and subdivisions of subsections b and c.

7. Functions of Draft Regulatory Program. The submission by each agency head of a draft regulatory program is intended primarily to ensure that each proposed significant regulatory action is well planned and is consistent with the priorities of other agencies and of the President. Review of prerulemaking as well as rulemaking actions is intended to ensure that agency heads have greater opportunity to be involved earlier in the regulatory management process when policy options are broadest; that significant regulatory actions are completed in a timely manner; that agency resources and Executive Order No. 12291 reviews can be concentrated on matters of greatest importance to the Administration; and that, to the extent permitted by law, agency resources will not be expended on regulatory actions that are not consistent with the regulatory goals of the agency head and of the President.

8. Internal Agency Management. Each agency's draft regulatory program should be the result of a comprehensive agency process that integrates analysis, planning, evaluation, and budgeting; and reflects:

   a. the express regulatory policies of the President;

   b. the missions, goals, and objectives of the agency; and

   c. consideration of appropriate roles for Federal, State and local governments, as well as the private sector, with respect to the activity covered.

9. Review, Compilation, and Publication of the Administration's Regulatory Program for 1985.

   a. The draft regulatory program required by Section 6 shall be submitted to the Office of Management and Budget no later than February 19, 1985. Three copies of each submission, and of any subsequent submission, shall be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3236, New Executive Office Building, Washington, D.C. 20503.

   b. Agencies shall provide additional information about regulatory plans, policies, or priorities, and individual regulatory actions as the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, may request. In addition, as necessary, arrangements will be made to convene meetings with agency officials to discuss their draft regulatory programs.

c. OMB review of the draft regulatory program of each agency will (1) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (2) identify such further regulatory or deregulatory actions as may be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, issues may be raised for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

d. Following the conclusion of this review process, each agency head shall submit, on a date to be specified by the Director, the agency's final regulatory program for compilation and publication in the Administration's Regulatory Program for 1985. OMB will circulate a draft of the Administration's Regulatory Program for 1985 for agency comment, review, and interagency consideration, if necessary, before publication. Nothing in this Bulletin shall be construed as displacing the agencies' responsibilities delegated by law.

10. Undertaking a Regulatory Action During the Reporting Year Not Included in, or Inconsistent with, the Administration's Regulatory Program for 1985.

a. After development of the Administration's Regulatory Program for 1985, if the agency head proposes to take a regulatory action subject to the provisions of Section 6 of this Bulletin and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final regulatory program for the Reporting Year, the agency head shall immediately advise the Director of OMB in writing, and submit the action to OMB for review by describing it in the Format attached to this Bulletin.

b. Except in the case of unanticipated emergency situations or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action under review pursuant to this Section until the OMB review of this submission is completed.

c. As to any proposed regulatory action that is not submitted under Executive Order No. 12291, i.e., a prerulemaking action, OMB shall be deemed to have determined that the proposal is consistent with Executive Order No. 12498 within 10 days of its submission, unless the agency is notified to the contrary within that 10 days.

d. As to any proposed regulatory action that is submitted under Executive Order No. 12291, i.e., a draft notice of proposed rulemaking or final rule, OMB shall be deemed to have concluded review of a significant regulatory action submitted pursuant to this Section within the appropriate time limit stated in Section 3(e)(2) of Executive Order No. 12291, unless the agency is notified to the contrary within that time limit. No separate filing under Executive Order No. 12498 is required under this circumstance.

e. Absent unusual circumstances, such as a new statutory or judicial requirement or an unanticipated emergency situation, OMB may return for reconsideration any rule submitted for review under Executive Order No. 12291 during the Reporting Year that would be subject to Section 6 of this Bulletin but was not included in the agency's final regulatory program for the Reporting Year; or any other planned steps or actions that are materially different from the action described in the Administration's Regulatory Program for 1985.

11. Exemptions. Pursuant to Section 2(c) of Executive Order No. 12498, the Director is authorized to exempt from the requirements of the Order and this Bulletin any class or category of regulatory actions as to which the Director determines that review is not necessary in order to achieve the effective implementation of the regulatory planning process. Requests for such exemptions should be submitted to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget.

12. Information Contact. For further information on the requirements of this Bulletin, each agency may contact the appropriate Desk Officer in the Office of Information and Regulatory Affairs, Office of Management and Budget.

13. Amendment of this Bulletin. OMB will review the requirements of this Bulletin after publication of the Administration's Regulatory Program for 1985. After assessing the implementation of this Bulletin, OMB will amend it to provide a time schedule and any additional guidance for preparation of the Administration's Regulatory Program for 1986.

David A. Stockman

David A. Stockman
Director

Attachment

ATTACHMENT 1 BULLETIN NO. 85-9

FORMAT FOR THE AGENCY DESCRIPTION OF EACH PROPOSED SIGNIFICANT REGULATORY ACTION PURSUANT TO EXECUTIVE ORDER NO. 12498

(IMPORTANT--Read the instructions following this Format before completing it.)

Date of Submission:

I. IDENTIFICATION

1. Department/Agency and Bureau/Office Issuing Regulation:

Agency Code:

2. Name of Person Who Can Best Answer Questions Concerning this Proposal:

Telephone:

3. Title of Regulatory Action:

RIN:

4. Existing Rule:

RIN:

5. Legal Authority:

6. a. Statutory Deadline: Yes _____ No _____

b. Judicial Deadline: Yes _____ No _____

c. Other Legal Mandate: Yes _____ No _____

(If the answer to any of the above is "Yes," specify the deadline and the mandate.)

II. STATUS

7. a. Indicate Whether this Proposed Significant Regulatory Action is Categorized as:

First Administration Review__________

Previously Reviewed Under Executive Orders No. 12291 or No. 12498________

Previously Reviewed by a Cabinet Council or Other Body in the Executive Office of the President_________

b. Describe Previous Review:

Date:

c. Indicate Whether the Previously Reviewed Action has:

Not Changed ____ Changed ____

(If it was previously reviewed under Executive Orders No. 12291 or No. 12498, and has not been changed, omit Parts III, IV, and V; if it has changed, omit Parts III and IV.)

(If it was previously reviewed by another body in the Executive Office of the President, and has not been changed, omit Part V; if it has changed, complete all Parts.)

III. PURPOSE OF PROPOSED SIGNIFICANT REGULATORY ACTION

8. a. Problem the Proposed Significant Regulatory Action is Intended to Solve:

b. Explanation of Why Private Action or Possible Action by Other Level of Government Would Not Be Adequate:

9. a. Potential Policy Issues to be Resolved:

b. Supporting Analyses to be Used:

c. Likely Problems of Implementation:

d. Benefits and Costs that have been Identified (In Dollars, if Practical):

10. Alternative Federal Regulatory (and Nonregulatory) Solutions under Consideration, including their Major Advantages and Disadvantages, and the Incidence of their Significant Benefits and Costs:

11. Information Collections that may be Involved in Pursing Alternatives Described in Question 10, and Analyses Described in Question 9:

IV. CONSISTENCY WITH ADMINISTRATION REGULATORY POLICY

12. a. "Significance" Of Regulatory Action:

    b. Applicable Element(s) in Definition In Section 5c of this Bulletin, e.g., "(1)"-"(7)" ______________

13. Consistency With Administration Regulatory Principles:

14. Constraints that may Cause Inconsistency with Administration Regulatory Principles:

V. CHANGES IN PLANNED STEPS OR ACTIONS CONCERNING THE SIGNIFICANT REGULATORY ACTION SINCE PREVIOUS ADMINISTRATION REVIEW

15. Nature of the Change:

16. Reasons for Change:

17. a. Administrative Discretion Available:

    b. Specific Statutory Or Judicial Constraint(s):

VI. TIMETABLE (Identify at least three future steps.)

18. Planned Steps or Actions	Date of Initiation	Date of Completion

ATTACHMENT 1 BULLETIN NO. 85-9

INSTRUCTIONS TO COMPLETE AGENCY DESCRIPTION OF EACH PROPOSED SIGNIFICANT REGULATORY ACTION PURSUANT TO EXECUTIVE ORDER NO. 12498 IN THE FORMAT REQUIRED

Coverage

Pursuant to Sections 6 and 10 of this Bulletin, the head of each agency covered by this Bulletin shall submit information concerning each proposed significant regulatory action (grouped as specified in subsections b and c of Section 6 of this Bulletin) in the Format attached to this Bulletin.

General Instructions

Each agency shall answer each question concisely but completely, taking as much space as needed after each question listed in the Format. Retype each question. If the question is not applicable, then type "N/A." On the top of the second and succeeding pages describing a significant regulatory action, state on the top of the page the agency, the title of the proposed significant regulatory action, and the Regulation Identifier Number (RIN), if any, previously assigned by the Regulatory Information Service Center to describe the action in the *Unified Agenda of Federal Regulations*.

Definition of "Significant Regulatory Action"

Section 5 of this Bulletin defines a "significant regulatory action" to include certain "prerulemaking actions" (defined in Section 5a) and certain "rulemaking actions" (defined in Section 5b).

In applying the definition of a "significant regulatory action," it is important to note four basic features.

First, while the definition applies to rulemaking actions--the drafting and publication of a notice of proposed rulemaking (NPRM) or of a final rule--it is meant to include only the relatively small proportion of all NPRMs and final rules that the agency or OMB considers to be the most important rulemakings (for the reasons stated in the definition). As a result, an agency should not describe as "significant regulatory actions" all the NPRMs and final rules that the agency will list in its *Unified Agenda of Federal Regulations*, or even all that would have been previously classified as "priority" for purposes of the *Unified Agenda*. Because the definition in Section 5 of this Bulletin is in some respects broader than the definition of "priority" in the *Unified Agenda*, an agency could describe as "significant" more NPRMs and final rules than the agency has previously designated as "priority" for publication in the *Unified Agenda*. On the other hand, in reviewing its list of "priority" rulemakings (as included in the Unified Agenda) an agency may decide that not all of them are "significant" within the meaning and purpose of this Bulletin. In this regard, the application of the term "significant regulatory action" should be influenced by the number of such actions that would be included by the interpretation of that term. This must be a manageable number and yet one that carries out the purposes of Executive Order No. 12498. Agencies are encouraged to consult with their OIRA Desk Officers in developing the list of "significant regulatory actions."

Second, the definition of "significant regulatory action" also includes prerulemaking regulatory activities, which are not included in the Unified Agenda. Specifically, both Executive Order No. 12498, in Section 2(a), and this Bulletin stress that agencies are to include a description of prerulemaking actions that would be a step toward adoption of a rule that would meet any of the criteria set forth in Section 5c(1)-(6) of the Bulletin, including actions taken to consider whether to initiate, or in contemplation of, a significant rulemaking. For example, the decision to create an agency task force to evaluate the need for a regulation that, if proposed, would be a "significant regulatory action," or to undertake a study to assess an economic problem related to possible regulatory action that would be "significant," or to analyze health and safety risks concerning a hazard the regulation of which would be "significant," should all be considered as significant prerulemaking activities.

Third, in determining whether a regulatory action is sufficiently "significant" to report, the agency should assess the overall importance of the regulatory action, not just the specific steps or actions that are planned during the Reporting Year. For example, during the Reporting Year, the agency may only plan to initiate a research contract, or to hold further public hearings to gain certain kinds of information. Although the individual steps or actions planned in the Reporting Year may not be a priority of the agency head or otherwise considered to be "significant," the fact that these are steps toward a regulatory action, or regulatory actions that, in the aggregate, are likely to be such a priority or otherwise "significant" warrants treating the overall effort as a "significant regulatory action."

Fourth, once the "significant regulatory action" has been identified, the agency should report the major steps or actions that the agency proposes to take on such "significant regulatory action" during the Reporting Year. Only the important steps or actions--or changes in important steps or actions--should be reported, i.e., those types of steps or actions for which this program is intended to ensure coordination and consistency with Administration policies and priorities. In cases of doubt as to whether a planned step or action is major, agencies are encouraged to consult with the OIRA Desk Officer.

Exemptions

In cases where full reporting would not serve the purposes of this program, and after consultation with the appropriate OIRA Desk Officer, an agency may request an exemption from the requirement that it answer the questions set forth in Parts II through VI of this Format for regulatory actions that are "significant" only because they are subject to a statutory or judicial deadline. The agency will still be required to complete all applicable Parts of this Format with respect to any regulatory action that meets any other criterion of Section 5c of the Bulletin in addition to Section 5c(3).

Instructions for Part I--IDENTIFICATION

1. Give the complete name for the Department/Agency and the Bureau/Office responsible for implementing the proposed significant regulatory action. Record the 4-digit Agency Code that OMB/OIRA has assigned to your agency for reviews pursuant to Standard Form 83. For example, the Food Safety and Inspection Service has been assigned the number 0583; and the Occupational Safety and Health Administration has been assigned the number 1218.

2. Identify the individual who is familiar with the proposed significant regulatory action and who can answer questions on behalf of the agency concerning such action. For example, this individual would often be the Branch or Office Chief responsible for implementing the significant regulatory action.

3. Use the full title of the significant regulatory action. If the action has not previously been given a formal title, use a short, descriptive phrase to describe the significant regulatory action. If this regulatory action has been described previously by answering the questions set forth in the Format attached to this Bulletin, or in the Unified Agenda of Federal Regulations, either use the same title or indicate in parentheses the previously used title. If a RIN has not been assigned, place "N/A" in the space provided.

4. If the proposed significant regulatory action is to revise an existing rule, identify the existing rule, provide either its FR or CFR cite (preferably, the CFR cite, if there is one), and its RIN, if any. If appropriate, indicate the portion of the existing rule planned to be revised. For example, a concise but complete answer would be: "'Health Requirements for Travel Abroad;' 14 CFR 9999, Subpart 6; proposed regulatory action to amend the definitions concerning food preparation in Subpart E, Sections 9999.502-9999.508. RIN: 2700-ZZ49."

5. State the legal authority for the regulatory action. Use the same format for doing so as is required by the Unified Agenda. For example, a legal authority could be cited as 42 USC 121; PL 91-190, Sec. 203; or E.O. No. 12291.

6. Indicate whether there is any statutory or court-ordered deadline, or other legal mandate requiring regulatory action by a date certain. A statutory or court-ordered deadline would include a requirement that the agency issue rules to implement a specific program by a given date; or a requirement that unless an agency issues rules to accomplish a given goal by a specific date, a specific consequence would take effect. A statutory or court-ordered deadline would not include an agency obligation to accomplish general goals, or a statement that the agency should protect the public from a general kind of problem. "Other Legal Mandate" refers to any other explicit legal obligation to act by a date certain, e.g., absent agency regulatory action by a specified date, the regulatory authority transfers to another agency; or funding to implement a given program expires by a date certain. If there is such a deadline or mandate, describe it, giving the current citation.

Instructions for Part II--STATUS

7. Section 6b of this Bulletin requires all significant regulatory actions to be divided into three categories, "First Administration review," "Previously reviewed: not changed," and "Previously reviewed: changed." If there has been previous Administration review, briefly identify it. Such review may have been conducted by a Cabinet Council, by OMB under Executive Order No. 12291, or under Executive Order No. 12498. Include in the description the organization in the Executive Office of the President that conducted the review, the date, and a brief summary of the results of the review.

If the significant regulatory action is categorized as "First Administration Review," the agency should complete Parts I, II (Question 7a), III, IV, and VI. If it was previously reviewed under Executive Orders No. 12291 or No. 12498, and not changed, the agency should complete Parts I, II, and VI; if it has changed, the agency should complete Parts I, II, V and VI. If it was previously reviewed by another body in the Executive Office of the President, and not changed, the agency should complete Parts I, II, III, IV, and VI; if it has changed, the agency should complete all Parts.

Instructions for Part III--PURPOSE OF PROPOSED SIGNIFICANT REGULATORY ACTION

General Instructions Concerning A Proposed Significant Regulatory Action That Was Subject To A Previous Administration Review. If the agency has previously answered the questions set forth in this Part of this Format, identify and describe any changes or additions to the information previously provided.

The amount of information that the agency can provide to answer the questions set forth in Part III of this Format will vary, depending upon the stage of the prerulemaking or rulemaking action. In some cases, especially at the earliest stages, the agency may not have the information needed to answer some of the questions set forth in this Format. In such instances, the agency should provide what it reasonably can but should not embark on costly or time-consuming analyses solely for the purpose of supplying more information.

8. Summarize the market failure or other problem that is creating the need for possible Federal regulatory action. Explain why actions by the private sector or other levels of government are not adequate to solve the problem. For example, explain why private interests are not taking sufficient action, and why State or city governments are unwilling or incapable of solving the problem.

9. Identify and describe the analyses that have been used or are planned to quantify or otherwise evaluate the magnitude of the problem. Identify any potential policy issues or likely problems of implementation the agency foresees. To the extent that the costs of agency implementation, and compliance by those being regulated, have been identified, so indicate. Likewise, indicate the benefits expected from solving the problem by regulation.

10. Summarize the Federal regulatory solutions that are being considered, including the major advantages and disadvantages of each, and any groups of persons, firms, or political jurisdictions that would receive a significant benefit or bear a significant cost if that solution is adopted. Include, as well, a summary of any nonregulatory solutions being considered, including Federal grants, or other forms of direct Federal aid; redirection of efforts to enforce existing regulatory programs; and any other form of Federal activity that does not involve a new regulatory action. Describe any related guidelines anticipated or currently in effect.

11. Identify any collections of information that may be involved in conducting any of the planned analyses or regulatory solutions being considered.

Instructions for Part IV--CONSISTENCY WITH ADMINISTRATION REGULATORY POLICY

12. Section 5c of this Bulletin defines a "significant" regulatory action by reference to seven criteria, any one of which is sufficient to require coverage. Explain briefly why this regulatory action is "significant," and refer specifically to all criteria that are applicable to it. Note that actions deemed "significant" solely by reason of criterion (3) in Section 5c may be eligible for an exemption. See "Exemptions," above.

13. Describe how this regulatory action is consistent with the Administration's regulatory principles set forth in Executive Order No. 12291 and the 1983 Task Force Report.

14. Describe any limitations or circumstances that may reasonably cause the agency to take a regulatory action that is not fully consistent with all Administration regulatory principles, policies, and priorities. Identify all regulatory principle(s) of Executive Order No. 12291 and the Task Force Report with which it may not be consistent. Include a specific reference to any statutory constraints that may cause this action to be inconsistent with an Administration principle, policy, or priority.

Instructions for Part V--CHANGES IN PROPOSED SIGNIFICANT REGULATORY ACTION SINCE PREVIOUS ADMINISTRATION REVIEW

15. Describe the nature of the change in the agency's proposed regulatory activity since the previous Administration review. For example, identify any option or regulatory approach, such as the use of marketable rights, an auction, etc., that has been added or deleted from those previously under consideration.

16. Describe the reasons for the change in the agency's previously proposed regulatory activity. Identify new information concerning the problem to be addressed, such as a new risk assessment, or new evidence suggesting that a new risk assessment should be conducted; new and unusual interest expressed by private or public groups; or any other factor causing the change in the previously proposed regulatory activity, including any change in applicable law that may require such change.

17. Specifically indicate whether and in what way the change may have the effect of limiting the administrative discretion available to the agency and the range of regulatory solutions being considered. Administrative discretion refers to the full range of administrative actions available to the agency as a whole, including other regulatory authority or coordinated efforts with other agencies.

Instructions for Part VI--TIMETABLE

18. State the nature of the next regulatory steps or actions planned for the "significant regulatory action,"--prerulemaking or rulemaking as defined in Sections 5a and b of this Bulletin--regardless of whether they are likely to occur during the Reporting Year ending on March 31, 1986. Give their expected dates of initiation and completion.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 4, 1985

EXECUTIVE ORDER

#12498

REGULATORY PLANNING PROCESS

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and Congressional understanding of the Administration's regulatory objectives, it is hereby ordered as follows:

Section 1. General Requirements. (a) There is hereby established a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year. To implement this process, each Executive agency subject to Executive Order No. 12291 shall submit to the Director of the Office of Management and Budget (OMB) each year, starting in 1985, a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions underway or planned; however, the Director may exempt from this Order such agencies or activities as the Director may deem appropriate in order to achieve the effective implementation of this Order.

(b) The head of each Executive agency subject to this Order shall ensure that all regulatory actions are consistent with the goals of the agency and of the Administration, and will be appropriately implemented.

(c) This program is intended to complement the existing regulatory planning and review procedures of agencies and the Executive branch, including the procedures established by Executive Order No. 12291.

(d) To assure consistency with the goals of the Administration, the head of each agency subject to this Order shall adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, including those elaborated by the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements."

Sec. 2. Agency Submission of Draft Regulatory Program. (a) The head of each agency shall submit to the Director an overview of the agency's regulatory policies, goals, and objectives for the program year and such information concerning all significant regulatory actions of the agency, planned or underway, including actions taken to consider whether to initiate rulemaking; requests for public comment; and the development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date, as the Director deems necessary to develop the Administration's Regulatory Program. This submission shall constitute the agency's draft regulatory program. The draft regulatory program shall be submitted to the Director each year, on a date to be specified by the Director, and shall cover the period from April 1 through March 31 of the following year.

(b) The overview portion of the agency's submission should discuss the agency's broad regulatory purposes, explain how they are consistent with the Administration's regulatory principles, and include a discussion of the significant regulatory actions, as defined by the Director, that it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules.

(c) Each agency head shall categorize and describe the regulatory actions described in subsection (a) in such format as the Director shall specify and provide such additional information as the Director may request; however, the Director shall, by Bulletin or Circular, exempt from the requirements of this Order any class or category of regulatory action that the Director determines is not necessary to review in order to achieve the effective implementation of the program.

Sec. 3. Review, Compilation, and Publication of the Administration's Regulatory Program. (a) In reviewing each agency's draft regulatory program, the Director shall (i) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (ii) identify such further regulatory or deregulatory actions as may, in his view, be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, the agency head or the Director may raise issues for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

(b) Following the conclusion of the review process established by subsection (a), each agency head shall submit to the Director, by a date to be specified by the Director, the agency's final regulatory plan for compilation and publication as the Administration's Regulatory Program for that year. The Director shall circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration, if necessary, before publication.

(c) After development of the Administration's Regulatory Program for the year, if the agency head proposes to take a regulatory action subject to the provisions of Section 2 and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final Regulatory Program, the agency head shall immediately advise the Director and submit the action to the Director for review in such format as the Director may specify. Except in the case of emergency situations, as defined by the Director, or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action until the review of this submission by the Director is completed. As to those regulatory actions not also subject to Executive Order No. 12291, the Director shall be deemed to have concluded that the proposal is consistent with the purposes of this Order, unless he notifies the agency head to the contrary within 10 days of its submission. As to those regulatory actions subject to Executive Order No. 12291, the Director's review shall be governed by the provisions of Section 3(e) of that Order.

(d) Absent unusual circumstances, such as new statutory or judicial requirements or unanticipated emergency situations, the Director may, to the extent permitted by law, return for reconsideration any rule submitted for review under Executive Order No. 12291 that would be subject to Section 2 but was not included in the agency's final Regulatory Program for that year; or any other significant regulatory action that is materially different from those described in the Administration's Regulatory Program for that year.

Sec. 4. Office of Management and Budget. The Director of the Office of Management and Budget is authorized, to the extent permitted by law, to take such actions as may be necessary to carry out the provisions of this Order.

Sec. 5. Judicial Review. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

RONALD REAGAN

THE WHITE HOUSE,
January 4, 1985.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 4, 1985

January 4, 1985

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Development of Administration's Regulatory Program

With your help and active support, this Administration has substantially reduced the burden and intrusiveness of Federal regulatory programs. In the past three years, we have eliminated many needless rules, revised ill-conceived ones, and held the number of new rules to the minimum necessary. The policies and procedures of Executive Order No. 12291 have imposed long needed discipline on the rulemaking process. As a result, Federal paperwork and the size of the Federal Register have declined for four consecutive years -- for the first time ever. Our accomplishments so far have been substantial, and we can take pride in them.

Much more can and should be done, however. Regulation has become one of the most important and costly activities of government, yet it is managed far less systematically than direct government spending. Several statutes and Executive Order No. 12291 establish procedures for agency rulemaking, but this is only the final stage of the regulatory process. Developing a government rule often involves years of studies, hearings, and intermediate decisions before even a proposed rule is issued for public comment. Frequently, senior agency officials are involved only after these earlier activities have greatly narrowed the options for final action and precluded effective Administration policy review.

Today, I have signed an Executive Order to establish a regulatory planning process by which we will develop and publish the Administration's Regulatory Program for each year. Under this process, it will be the personal responsibility of the head of each agency to determine -- at the beginning of the regulatory process, not at the end -- whether a given regulatory venture is consistent with the goals of the Administration and whether agency resources should be committed to it. Each agency head will thus be accountable for the management of the regulatory process, to ensure that policy options are not narrowed prematurely and that each significant regulatory proposal will be considered in relation to others.

To do this, I am requesting each regulatory agency to draft its proposed regulatory policies at the beginning of each year and to set forth a statement of priority regulatory activities, including prerulemaking actions, that constitute the agency's regulatory program for the year. This document should explain how each new activity will carry out the regulatory policies of this Administration and specify the agency's plan for reviewing and revising existing regulatory programs to bring them into accord with Administration policies.

more

(OVER)

After approval by the head of the agency, the agency's draft regulatory program should be submitted for review by the Office of Management and Budget. This review should focus on consistency with general Administration policy, and with the draft regulatory programs submitted by other agencies. The Office of Management and Budget will circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration if necessary before the document is put in final form for publication. Issues may be raised for further review by a Cabinet Council or by me or by such other group as I may designate. This review will not interfere with the exercise of authority committed by statute to heads of agencies.

The final regulatory programs of all agencies will be published by the Office of Management and Budget in May as the Administration's Regulatory Program for the twelve-month period beginning April 1, 1985. During the year, this document will be used as a basis for reviews of individual rules under Executive Order No. 12291. At the end of the year, it should be used to assess the agency's performance and to prepare the next year's program.

I am directing the Director of the Office of Management and Budget to implement this regulatory review process immediately and to establish the procedures under which these documents will be submitted to the Director and reviewed. For their first submission, agencies shall submit their draft regulatory program to the Director on the date specified by him. The Director will prepare for my consideration the goals and priorities for all agencies in a manner similar to the identification of significant issues in the fiscal budgetary process.

I am convinced that this process will result in substantial improvements in Federal regulatory policy. It will help ensure that each major step in the process of rule development is consistent with Administration policy. It will enable agency heads to manage agency regulatory actions more effectively, at the same time that it enables the President to hold agency heads more closely accountable for implementing Administration policy.

While ambitious, this program will build on our earlier efforts that have proven successful -- the Executive Order No. 12291 review process, the reviews of inherited rules by the Task Force on Regulatory Relief, and the annual "paperwork budget" process.

I am confident that your wholehearted support will make this next stage in our regulatory reform program equally successful.

RONALD REAGAN

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Mr. Coleman. Mr. Skeen and for members of the committee and anyone else in terms of Customs, it was authorized for FY 86 in P.L. 99-272 at certain levels. As we all know, however, and this gets to the issue that you should be concerned with that OMB has taken a position that we should enforce the U.S. Customs cut of fiscal year 1986 due to Gramm-Rudman and in addition to that carry forward an additional cut of $11 million for 1987. I suspect that is still the position of OMB because that is what was in the President's budget.

Mr. Miller. Yes.

Mr. Coleman. As you said earlier, you said you are still working from that basis.

Mr. Miller. Yes.

Mr. Coleman. I think then it becomes very tough for this committee, at least for this member, to suggest that we should restore OMB's Gramm-Rudman cut while continuing to cut Customs. I think that becomes the problem, and some of us who are from regions of the country that feel it is extremely important that we get full staffing for Customs so that we can carry on commerce. I think it is going to be very difficult for me to justify restoring your cuts and not doing the same for Customs.

On the other hand, if we are able to pass the supplemental, then we have taken the position in the Appropriations Committee that at least restoration should take place. I hope in your discussions with the President concerning that supplemental bill, if he decides to veto the bill that restoration of Customs not be the basis for the veto because it becomes extremely hard to explain why we should restore cuts in one area and not others that we feel are just as important.

I thank you, Mr. Chairman.

Mr. Roybal. Thank you.

Mr. Director, I have used the IRS as an example to show what Congress envisioned OIRA doing when Congress authorized it. I use it because it is an obvious example of funding an activity to such an extent that OIRA did not do its job in other areas.

The reason for that, again, is the fact that we get complaints from various departments and various members of the House. They quote the same section of the law in asserting that it is one of the greatest responsibilities of OIRA to promote use of automatic data processing and telecommunications equipment by the federal government to improve the effectiveness of the use and dissemination of data in the operation of federal programs. Then they point out: What is OIRA doing reviewing regulations?

Now, are they correct? Is that, in fact, one of the main responsibilities of OIRA?

Mr. Miller. Well——

Mr. Roybal. Or is reviewing regulations the main responsibility?

Mr. Miller. Let me say the Paperwork Reduction Act was a rather multi-faceted act. It gave OMB a multi-faceted set of goals.

Mr. Roybal. But you do not have that much personnel.

Mr. Miller. One could say what does ADP acquisition policy have to do with paperwork reduction, and what does that have to do with information policy? Why was the word "regulation" in the OIRA name? As I indicated earlier, the review of regulations is, I think, a derivative power of the President under the Constitution and he will choose within reason how to carry out that authority.

Since OIRA reviews agency regulations, reviews information resource management, reviews paperwork requirements, et cetera, it seemed this was the logical place since it is in the Office of Management and Budget—to house the regulatory review process.

I do believe that we do a good job in responding to that particular ADP mandate that you just read. I will be glad for the record, if you would like, to indicate or provide a narrative of what we have done in addition to the question you raised about IRS.

[The information follows:]

Question. What has OMB done to carry out the general information policy functions assigned to the Director under the Paperwork Reduction Act?

Answer. In order to establish a basic policy framework for managing the vast information resources of the Federal Government, OMB published on December 12, 1985, Circular No. A-130, the Management of Federal Information Resources.

The Circular streamlines Federal information policy by consolidating five previously existing directives into a single comprehensive policy. In this consolidation, guidance to Federal agencies on administration of the Privacy Act and on security of automated information systems has been updated and simplified.

The Circular requires agencies to create, collect, process, and disseminate information in accordance with statute or agency missions. Agencies must show that their information dissemination activities are necessary to the proper performance of agency functions; nonduplicative of other information products and services; accomplished cost-effectively; conducted with maximum feasible reliance on the private sector; and subjected to periodic reviews as to the need for and manner of dissemination.

The Circular also establishes planning processes and management controls for information technology.

Program officials are made accountable for information systems.

It requires acquisition of off-the-shelf software rather than custom development; appropriate security for information systems; full cost accounting for information technology facilities; and enjoin agencies to realize savings through application of up-to-date information technology.

Mr. ROYBAL. And I would like to find out where you spend the most time, Mr. Miller.

[The information follows:]

Question. Where does OIRA spend most of its time?

Answer. OIRA's primary responsibilities include: paperwork review, information policy and ADP oversight, statistical policy oversight and regulatory review. As a practical matter, we cannot and do not try to separate the time or resources spent on our review of paperwork and ADP activities from those spent on our review of regulations for a particular agency. The same "desk officer" in OIRA carries out all of these functions for an agency. There is too much overlap to have more than one person performing these reviews. The reviews themselves are conducted simultaneously to ensure consistency and to promote an understanding of the program area to which the regulatory, information, and ADP components relate.

The paperwork reviews that OIRA conducts complement the regulatory reviews. About 80 percent of the total Federal reporting burden in FY 1985, excluding procurement, were for regulatory purposes. This interrelationship requires that we conduct simultaneous and interrelated reviews. Many of OIRA's efforts to reduce paperwork burdens and improve ADP systems would be unsuccessful if the corresponding regulations were not changed to implement reductions or improvements.

For example, from February of 1981 until December 31, 1985, OIRA reviewed 12,245 draft regulations under Executive Order No. 12291. During the same period, OIRA reviewed about 20,400 paperwork requests. Last year, we reviewed 302 draft regulations from the Environmental Protection Agency (EPA). We also reviewed 108 paperwork requests from EPA last year. Since over 95 percent of EPA's paperwork burden comes from regulatory requirements, we have the same person review both, and we do not ask them to keep time cards to try to allocate time to each.

Mr. **Roybal**. Because from reports we get, you seem to spend too much time in reviewing of regulations, that you keep reviewing the same regulations, and they stay in your office too long a time without any action, all kinds of complaints.

Mr. **Miller**. I will be glad to respond to that complaint as well.

[The information follows:]

Question. Does OIRA keep reviewing the same regulations?

Answer. OIRA does not keep reviewing the same regulations. Obviously, each proposed rule that eventually becomes a final rule would be reviewed twice—once when it is proposed and a second time when it is issued as a final rule. If the rule does not significantly change from when it was proposed, the final review will generally be quick. Otherwise, there are very few instances where the same rule would be reviewed again.

These are: 1. If the agency chose to repropose the rule rather than issuing a final rule; 2. if the rule were withdrawn and later resubmitted; and 3. if OIRA returned the rule for reconsideration, and the rule was resubmitted.

In 1985, only 33 out of 2,211 rules, or 1.5 percent, were returned.

Question. Does OIRA spend too much time reviewing regulations? And does OIRA delay rules without taking any action?

Answer. As previously stated, we cannot specify how much time is spent on reviewing regulations as opposed to all other OIRA activities. We believe OIRA's staff spends the necessary amount of time to ensure requirements of Executive Order No. 12291.

Executive Order No. 12291 provides 10 days for OMB review of non-major rules. For major rules, the Order affords 60 days of review for a proposed rule, 30 days for final ones. All of these review periods may be extended by notice from OIRA to the agency concerned. From February 1981, when President Reagan signed E.O.12291, to December 31, 1985, the statistics for OIRA E.O. 12291 reviews are the following:

OIRA reviewed a total of 331 "major" rules from all the Departments and agencies subject to the Executive Order. Review of "major" proposed rules averaged about 43 days; review of "major" final rules averaged about 26 days. Reviews of all "major" rules averaged 32 days.

OIRA also reviewed a total of 11,914 non-major rules under E.O. 12291 in an average of 16 days.

81 percent of all rules were reviewed in 10 days or fewer; 90 percent were reviewed within 30 days.

Most rules take anywhere from one to eight years to develop. We do not believe that E.O. 12291 review causes any significant delay in this process.

Mr. **Roybal**. I hope you can respond to that because we want to know what the real situation is.

Mr. **Miller**. Yes, certainly.

Mr. **Roybal**. Now, we have various other questions with regard to the Paperwork Reduction Act which we are going to submit for the record.

Mr. **Miller**. Sure.

Mr. **Roybal**. There will be other questions for the record. We would like to ask you questions between now and the time we will be adjourning. I understand you have to leave sometime around noon.

Mr. **Miller**. Well, sir, I have just missed a meeting at 11:20 actually. I meant to chat with you about that earlier, but——

Mr. **Roybal**. I am sorry. I was under the impression that you would not come back this afternoon.

Mr. **Miller**. I do have meetings, including one with the President this afternoon, but I am at your disposal.

Mr. **Roybal**. All right. We have some questions with regard to OMB involvement in reviewing Medicaid and Medicare waivers that we would be submitting. They are quite lengthy, they will require a lengthy response; and I suppose it will facilitate matters if we gave them to you and you would respond to them.

Mr. **Miller**. Be glad to.

Mr. **Roybal**. One question for the record. OMB has a general responsibility for coordinating federal statistical policy, including data collection on Hispanics required by P.L. 94-311. How is OMB handling that responsibility and what is OMB doing to monitor agency compliance and to inventory the data collected?

Mr. **Miller**. Is that a specific responsibility given in a different statute?

Mr. **Roybal**. I would think so.

Mr. **Miller**. Let me look into that and get back to you for the record.

Mr. **Roybal**. In that case we will submit these questions for the record because they cite specific activities.

Mr. **Roybal**. You are increasing by 11 percent and everything else is being decreased. You have not satisfied me, at least, as to what the real logic is behind decreasing Customs and other things and still increasing your own budget.

Mr. **Miller**. Again, Mr. Chairman, so many of the other agencies even within the context, especially within the context of the agencies within your jurisdiction, are being increased. Even for 1987 they are being increased.

Mr. **Roybal**. Sure.

Mr. **Miller**. Customs is a portion of the overall Treasury budget.

Mr. **Roybal**. But in general they are requesting an increase.

Mr. **Miller**. Right.

Mr. **Roybal**. Right. That is what they mean, that they will be increased?

Mr. **Miller**. Right. We are requesting an increase.

Mr. **Roybal**. All right. Then maybe you can tell the committee what specifically do you expect to achieve with a budget increase proposal for 1987.

Mr. **Miller**. We anticipate meeting the requirements of being the President's strong right arm. We anticipate being able to respond to congressional inquiries and discussions with members of the Legislative Branch on issues. We anticipate being able to carry out the mandate of Gramm-Rudman-Hollings. In addition, I hope to be able to provide some relief to the staff members of the OMB who presently are in a rather frazzled state. As I indicated, I lack about a tenth of the personnel that are authorized. We have over 60 vacancies. Again, just to meet the ceiling we have 60 vacancies.

I will quickly have to come to the determination of retracting somewhat on the overall scope of our activities, because people can be stressed and stretched only so far.

Mr. **Roybal**. Now, what specifically is the increase for OIRA expected to be? Where is it expected to be applied? Is that also in personnel?

Mr. **Miller**. Mostly personnel, OIRA like the rest of OMB is primarily people.

Mr. **Roybal**. What about the impact on your Paperwork Reduction Act? What effect would that have in the event that you did not receive that increase?

Mr. **Miller**. If the Paperwork Reduction Act were not reauthorized or——

Mr. **Roybal**. Well, if we did not put back in the $5.5 million that you request.

Mr. **Miller**. All the activities of the ADP, statistics and policy, information policy, the computer program, the paperwork reduction all those activities would be halted.

Mr. **Roybal**. You know, Mr. Miller, it is true that many of the agencies under this committee are not authorized, including Customs. But no one has given us notice that they are going to call a point of order on Customs, but they have on the Paperwork Reduction Act.

Mr. **Miller**. I see.

Mr. **Roybal**. So we have quite a problem that can start a chain reaction if we bring in the Paperwork Reduction Act without authorization and the point of order is called on that; it may just start a reaction where they call the point of order on all other agencies that are not authorized. Then we do not have a bill.

So it may not be very smart for this committee to make that recommendation.

I am asking the question in the event that a point of order were called, what effect would it have. You say it will have a detrimental effect. Is that correct?

Mr. **Miller**. Well, in terms of the resources, one thing you could do is just add the additional resources, not under the OIRA line but under OMB generally, but this does not solve the problem. If you did that and there is a point of order because of the lack of reauthorization of OIRA, as I understand it, this would mean the ability of OMB to control the paperwork flow, to control the forms that agencies send out, would lapse, as well as the ability of OIRA to issue rules relating to acquisition of ADP systems and so on.

So I think that would be a bad thing. It is not just the money. It is the specific functions that the Paperwork Reduction Act was meant for OMB to have and to carry out.

Mr. **Roybal**. You stated the other departments under our jurisdiction did, in fact, request an increase in budget. Now, I would assume that that increase in budget was intended to inflate the budget estimates to take care of the automatic cuts under Gramm-Rudman.

Mr. **Miller**. No.

EFFECTS OF GRAMM-RUDMAN-HOLLINGS

Mr. **Roybal**. Well, I would say that is the case of most other agencies, and I am asking you if that is the case with respect to OMB?

Mr. **Miller**. No. Let me say how we look at this. What we do is we look at 1987 and 1986 very differently. 1986, there is congressional appropriations and then there was a sequester and that is the number. We have not come up with supplementals saying let's restore amounts of monies that were sequestered under Gramm-Rudman-Hollings. We have not done that.

On the other hand, we look at 1987 and say Gramm-Rudman-Hollings requires the President to submit a budget that incorporates a deficit no higher than $144 billion. Within the spending and the revenues within that budget, the President establishes priorities—which agencies he wants increases for, which agencies he wants decreases for, which agencies he wants to remain the same, and which agencies he proposes to eliminate.

So those are very different decision-making processes. 1986, we do not restore Gramm-Rudman. 1987 is a completely new slate. The budget has to be within the Gramm-Rudman-Hollings maximum deficit of $144 billion, but within that, he chooses priorities and that is what is incorporated in the budget.

Mr. **Roybal**. Well, no matter how that is explained it is still in every one of the requests made; they had an amount for 1986 that was somewhat of a reduction because of Gramm-Rudman, and then an increase over 1986 in their 1987 request, and no matter how you look at it, it is an increase.

Mr. **Miller**. Right. If anyone made the representation to you that the President increased an agency in 1987 over 1986 in order to restore Gramm-Rudman-Hollings cuts, that was an incorrect representation.

Mr. **Roybal**. I do not think that was done in order to restore, but I think that the ultimate effect was to restore; it ended in restoring the amount lost under Gramm-Rudman. I do not know how else it can be explained.

Mr. **Miller**. Well, that is not—that is a semantic matter, I guess.

Mr. **Roybal**. While there was no intent perhaps, it amounts to the same thing, an increase.

Mr. **Miller**. Could I just back up, Mr. Chairman. Let's suppose we just forget 1986 altogether and forget the Gramm-Rudman-Hollings sequester. If all that you knew is that OMB had a certain level of funding in 1985, and you knew, secondly, that in the interim additional demands, additional responsibilities were added to the agency, and the director of the agency comes in and for 1987 says please give us almost, not fully, but almost as much in real terms as you gave us two years ago. I think that you would probably have concluded that was a very reasonable request.

Mr. **Coleman**. Mr. Chairman.

Mr. **Roybal**. Yes.

CUSTOMS

Mr. **Coleman**. If you would yield on that point, I think that is exactly what the supplemental does with respect to Customs. Exactly. I think the numbers will indicate just that. It is still $15 million short of what it would have been out of $45 million if we had done exactly what they had wanted. They were $15 million short; that is just what was done in the supplemental.

I thank the chairman.

Mr. **Miller**. I will be glad to look at it. My understanding is that Customs has received more than that, about twice as much of an increase as OMB has.

Mr. **Coleman**. Since 1981?

Mr. **Miller**. In real terms. Since OMB has been down since 1981, any increase——

Mr. **Coleman**. You should look at those numbers and you will find them to be very similar.

Mr. **Miller**. Let me look at the data.

[The information follows:]

Mr. Coleman, the information noted below supports my assertion that the Customs Service budget has increased by over twice as much as the budget of the Office of Management and Budget since 1981.

In 1981, the Office of Management and Budget was appropriated approximately $33 million for salaries and expenses. In 1987, the Administration is requesting $39.6 million. The total percentage increase from 1981 to 1987 is approximately 21 percent.

In 1981, the Customs Service was appropriated approximately $498 million. In 1987, the Administration is requesting a Customs Service budget totalling $748 million (salaries and expenses and the air interdiction program). The total percentage increase from 1981 to 1987 exceeds 50 percent.

Mr. **ROYBAL**. The truth of the matter is that the request for Customs has been less and less every year from the standpoint of personnel, decreasing personnel. It is this committee that has restored it. So whatever Customs has now is actually not due to any request that OMB has made because the committee has, in fact, restored it.

Mr. **MILLER**. Yes.

Mr. **ROYBAL**. Now, we would like to have you take a look at the situation with respect to Customs and IRS, the two revenue producing departments, give us a reading on the entire situation and take a good look at what is actually happening with these reductions and the impact that it is having out in our various communities.

Mr. **MILLER**. As I told you earlier, we are looking into the question of the revenue impact of Customs, and I will be getting back to you on that.

Mr. **ROYBAL**. And also look at the impact of these cutbacks on narcotics trafficking and things that are needed in that area, things we just do not have.

Mr. **MILLER**. Right. But as I indicated, Mr. Chairman, the overall program which involves the Justice Department, including the FBI and others, our effort here was to mold those activities in the most cost effective way and, in addition, give $146 million more for 1987. But I will take a look at it.

Mr. **ROYBAL**. That is $146 million more for what?

Mr. **MILLER**. For 1987. For all the agencies drug suppression activities and drug control programs combined.

Mr. **ROYBAL**. But you reduce personnel by 1556 positions and who does the interdiction? Men. Personnel. People.

Mr. **MILLER**. But not only the Customs.

Mr. **ROYBAL**. Not only the Customs, but they are the ones in the front line——

Mr. **MILLER**. Right.

Mr. **ROYBAL** [continuing]. In the ports of entry where these people just come right in and there are thousands coming in every day in every port of entry in the country.

Mr. **MILLER**. Right.

Mr. **ROYBAL**. So somewhere down the line those 1556 people are not there and people will come through our parts of entry without inspection.

Mr. **MILLER**. I think it is a question of where they should be distributed at the margins. For example, if you had only Customs I think you would agree officers trying to interdict drugs——

Mr. **ROYBAL**. But the problems are so great we ought to have it all over, plus Customs fully funded for that purpose.

Mr. **MILLER**. I see your argument.

Mr. **Roybal.** But the problem is——

Mr. **Miller.** It is a decision.

Mr. **Roybal.** It is the biggest problem we have. It is undermining the moral fiber of this nation. There is no two ways about it. It is in every junior high school, in every high school in the United States regardless of whether it is a very fancy school, religious school or whatever.

Mr. **Miller.** I know.

Mr. **Roybal.** They have problems with narcotics and we are permitting this junk to come into the United States.

Mr. **Miller.** Right. I understand.

Mr. **Roybal.** Have you gone out to see some of the fields in Hawaii and California and in Florida right under our nose?

Mr. **Miller.** We do not have very much travel money, Mr. Chairman. I have not had a chance to get very far. As I indicated before, I am a member of the Drug Task Force and I have been——

Mr. **Roybal.** What have they been doing?

Mr. **Miller.** It is an oversight group that meets regularly to coordinate activities of the various agencies. As I indicated, we made a presentation to the President a couple weeks ago.

Mr. **Roybal.** You know, Mr. Miller, we are not experts in the field; but what we have been told is that when the Task Force was established in Florida they took agents from all over the United States and put them in Florida. These narcotics agents——

Mr. **Miller.** Now they are in California.

Mr. **Roybal.** Drug smugglers are not dumb, so they go somewhere else. They went to California, where we took some agents from, to Seattle, Washington and to New York, New York. They are still back in the United States. What we should have done is increase personnel, put them in Florida and elsewhere, because I suppose they are doing a good job, but you cannot do a good job in law enforcement with less police officers Customs Service is a law enforcement agency that can do a much better job of the interdiction of narcotics.

I am really concerned about what is happening in this country. I really am.

Mr. **Miller.** Oh, I am too; and as you know, the First Lady is very involved.

Mr. **Roybal.** Why don't we then put money in these agencies that can do something about it if we really are interested? Why do we cut back on agencies like Customs that deal with narcotics?

Mr. **Miller.** Well, we increase a good amount in other places. But I will tell you, I will make a deal with you. I will go back and review that package, especially in light of the discussion.

[The following was provided for the record.]

Resource Levels Necessary for the Customs Service

Question. What is your position on the amount of resources necessary for the Customs Service? In the past several years the Administration has proposed significant reductions in the Customs Service budget, while major problems being addressed by Customs Service have grown.

Answer. In 1987, Customs Service resources will reflect President Reagan's insistence for strengthened law enforcement efforts along with better management of government services.

After reductions in 1986 required by the Gramm-Rudman-Hollings measure, increases will be provided in 1987 for Automated Commercial System (ACS) enhancement and for upgrading the Treasury Enforcement Communications Systems (TECS).

Funding in 1986 and 1987 for the air interdiction program will be consistent with actual operations in 1985.

The Customs Service 1987 budget will: continue to reflect the high priority of Customs Service law enforcement initiatives; continue the initiative to make more efficient and effective the Customs Service processing of cargo and passenger processing operations; and continue the legislative initiative for the Customs Service to collect fees to recover its costs of processing imports, conveyances and passengers.

Savings have been realized through increased efforts in automation, administrative efficiencies and increased cargo processing selectivity. These savings are reflected in the budget.

Such savings can be achieved without diminishing the Customs Service drug interdiction efforts or inconveniencing business interests and the public.

Mr. ROYBAL. That is what I was hoping you would say, that you go back in and take a good look at it, because the problem is one of the greatest problems that we have.

Are there any other questions on the part of the members of the committee?

If not, we know that you must be leaving, Mr. Miller. We have questions that will be submitted for the record.

Mr. MILLER. If you will, we will get to them as soon as we can.

Mr. ROYBAL. I hope it can be done so that we can complete this. We want to mark up within the next two weeks.

Mr. MILLER. Okay.

Mr. ROYBAL. If it can be submitted, we will greatly appreciate it.

Mr. MILLER. We will do our best.

Mr. ROYBAL. Thank you very much.

Mr. MILLER. Thank you, Mr. Chairman.

[The following questions and the answers thereto were submitted for the record:]

Mr. ROYBAL. What has OMB's involvement been in reviewing Medicaid and Medicare waivers under HHS consideration? For each waiver that OMB has reviewed before HHS approval, describe what took place, what type of waiver was involved, what entity requested the waiver, and a chronology and summary of OMB actions from the time the waiver request was submitted to OMB until final HHS action.

Mr. MILLER. Under the Budget Acts and the Antideficiency Act, we are mandated to provide the Congress with estimates of what Federal programs will cost and assure that spending comports with approved financial plans. OMB review of waiver requests are based on these statutes rather than Executive Orders No. 12291 or 12498 which pertain exclusively to regulatory review. HHS periodically notifies us of their completed action on Home and Community Based waivers and their fiscal effect. On other waivers, HHS informs us of waiver requests and we advise them of the relationship of the proposed action to the Budget. Since reviewing the fiscal impact of waivers on the President's budget is part of our ongoing, routine work, we do not keep records on each specific activity

Mr. ROYBAL. Last week I sent you a letter requesting an update on the Office of Management and Budget's initial denial of SSA's request for $49 million of the FY 86 Contingency Reserve Fund to implement the disability benefits reform act of 1984. What further action has been taken on SSA's request?

Since the Administration's position was, and continues to be, that the increased contingency reserve is necessary for the fair and impartial implementation of the 1984 disability amendments, what is your rationale for denying the initial request, and what are the consequences to disability beneficiaries of the failure to use these funds?

If you do not allow SSA to use the reserve fund for its primary intended purpose, how would you allow SSA to use the fund?

See the attached letter from Mr. Miller.

April 29, 1986.

Hon. Edward R. Roybal,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Roybal: Thank you for your letter of April 9th, concerning the implementation of the Disability Benefits Reform Act of 1984. I share your concern that the provisions of this Act be implemented in a fair and impartial manner.

My staff advised me that based on later data, the Department of Health and Human Services has sought a revised level of resources to carry out the Disability Amendments. HHS requested that we return the resubmitted reapportionment requests, so that they may revise the financial plans consistent with the new resource level. HHS' original request was returned because the accompanying financial plans were incomplete.

HHS has assured us that mental impairment rereviews and continuing disability reviews are now underway, and that they have no plans to delay the reviews of mental impairment cases.

Thank you again for sharing your concerns with me.

Sincerely yours,

James C. Miller III,
Director.

Mr. Roybal. Last year the Committee inserted language in the bill restricting the authority of OMB to review transcripts. Please inform the Committee of the actions that OMB had been taking before the enactment of this restriction, and a brief summary of what OMB currently does in this area.

Mr. Miller. I have no direct, personal knowledge of what OMB had been doing in this regard before I became Director. I'm told that infrequently someone in OMB might have a need to know what was in actual testimony before it was printed and, therefore, sought out a copy. Since the enactment last year of the language to which you refer, OMB has not reviewed the transcript of actual testimony of officials before the Appropriations Committee or Veterans Affairs Committee or their subcommittees. Our policy generally with respect to budget-related testimony is as follows: We do not require agencies to submit copies of transcripts of actual testimony for review prior to its return to the subcommittee or committee that held the hearing. If there is a need to see the transcript of actual testimony of an official of another agency, prior to its publication, OMB will request a copy of the transcript either directly from the subcommittee or committee or through the agency whose official testified. Should access be given, OMB comments will be limited to suggested corrections of factual errors and identification of statements by the witness that are not consistent with the President's policy. OMB may provide an explanation of the President's policy, but will not suggest that statements of the witness be revised to make them consistent with that policy.

Mr. Roybal. For each year since 1981, how many major and non-major rules has OIRA reviewed for each Federal agency, and what were the average review times for each category?

Mr. Miller. I am providing as Exhibit 3, a table showing, for all Departments and five major agencies, the number of major and non-major rules we have reviewed since 1981, and the average review time.

Exhibit 3

Number of Executive Order No. 12291 Reviews and Timeframes*

Dept./Agency	1981		1982		1983		1984		1985	
	Major	Non-Major	Major	Non-Major	Major	Non-Major	Major	Non-Major	Major	Non-Major
Agriculture	12(22)	644(8)	38(17)	657(10)	21(15)	531(13)	17(11)	466(19)	12(15)	395(19)
Commerce	8(8)	154(8)	3(22)	144(9)	1(5)	120(11)	1(316)	106(14)	0	113(12)
Defense	0	4(9)	0	9(6)	0	13(16)	0	7(30)	0	17(30)
Education	0	77(8)	3(32)	50(12)	0	50(11)	1(39)	105(18)	0	108(16)
Energy	3(7)	50(7)	2(26)	47(6)	2(45)	32(7)	1(77)	24(9)	1(30)	18(7)
HHS	3(8)	114(7)	5(21)	267(10)	6(35)	288(18)	3(3)	196(33)	10(74)	202(46)
HUD	0	71(14)	0	130(11)	5(12)	107(15)	4(10)	104(18)	0	90(27)
Interior	11(6)	136(8)	9(13)	240(10)	7(12)	233(17)	3(7)	130(17)	5(5)	156(19)
Justice	0	53(6)	0	51(7)	0	72(14)	0	46(10)	0	78(9)
Labor	9(26)	53(9)	4(37)	45(10)	5(121)	44(18)	0	35(43)	2(173)	36(55)
State	0	13(9)	0	10(7)	1(28)	2(10)	0	4(5)	0	7(16)
Transportation	7(8)	276(8)	5(37)	221(12)	7(24)	218(15)	9(42)	209(20)	8(80)	243(34)
Treasury	1(1)	33(8)	1(60)	31(13)	0	53(12)	1(17)	43(18)	1(16)	25(13)
EPA	4(12)	730(9)	7(88)	334(17)	5(14)	263(22)	8(58)	295(30)	13(78)	292(33)
CAB	0	52(7)	0	52(15)	0	53(8)	3(16)	20(10)	0	1(423)
VA	0	69(10)	0	70(11)	0	69(15)	0	70(15)	0	65(23)
EEOC	0	7(9)	0	3(9)	0	5(21)	0	0	0	5(127)
GSA	0	56(9)	1(11)	61(15)	0	85(14)	1(1)	62(20)	1(1)	84(18)

*Average review times, in days, in parentheses.

Mr. **Roybal**. What has the nature of OMB's review of HHS regulatory actions been since 1981? Please provide detailed information for each major rule reviewed by OMB:

Was there any applicable statutory of judicial deadline?

On what date did the agency submit the action to OMB?

When did OMB take action on the submission?

What action did OMB take and for what reasons?

Were changes made to proposed or final regulations or were the regulations returned or withdrawn?

When did HHS complete its action?

Specifically, what comments, orally or in writing, did OMB provide HHS on these regulations?

Mr. **Miller**. I am providing, as Exhibit 2, a computerized listing of all "major" HHS rules that we have reviewed under Executive Order No. 12291. Those rules for which an asterisk appears next to the title had either a statutory or judicial deadline. For those reguations for which review code #2 is noted, changes were made by HHS prior to completion of our review. Regulations for which review code #1 appears were published without any modification.

Exhibit 2

THE FOLLOWING SHOWS THE MEANING OF CODES
AND ABBREVIATIONS USED IN THE ATTACHED REPORT.

CLASS OF RULE

N/A = E.O. CLASS IS NOT APPLICABLE TO REGULATORY SUBMISSION
MAJ AT NPRM = MAJOR RULE, AT NPRM STAGE
MAJ NO NPRM = MAJOR FINAL RULE FOR WHICH NO NPRM WAS PUBLISHED
MAJ AFT NPRM = MAJOR FINAL RULE, AFTER PUBLICATION OF NPRM
NONMAJ NPRM = NONMAJOR RULE, AT NPRM STAGE
NONMAJ FINAL = NONMAJOR RULE, AT FINAL STAGE
NONMAJ UNSPC = NONMAJOR RULE, AT UNSPECIFIED STAGE

REVIEW CODE/TYPE OF REVIEW

1 = CONSISTENT WITH E.O. WITHOUT CHANGE
2 = CONSISTENT WITH E.O. WITH CHANGE
3 = WITHDRAWN BY AGENCY
4 = WITHDRAWN BY AGENCY AND CONTINUE
5 = EXEMPT FROM E.O.
6 = EXEMPT FROM E.O. AND CONTINUE
7 = RETURNED-SENT IMPROPERLY
8 = RETURNED-SENT IMPROPERLY AND CONTINUE
9 = RETURNED FOR RECONSIDERATION
10 = RETURNED FOR RECONSIDERATION AND CONTINUE
11 = EMERGENCY CASE
12 = STATUTORY OR JUDICIAL DEADLINE CASE

DESCR (REGULATORY DESCRIPTION)

NEW = NEW REGULATION
MOD = MODIFIES EXISTING REGULATION
RES = RESCINDS EXISTING REGULATION
DEF = DEFERS EFFECTIVE DATE

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                              REGULATORY REVIEW LIST BY AGENCY                                        PAGE    1
                              FOR PERIOD 01/01/81 THRU 04/18/86                                       04/18/86

Department of Health and Human Services
Food and Drug Administration                                              (*** INDICATES REVIEW COMPLETED BY DEFAULT)
 .   ..............................................................................................
                                                            CLASS       DATE      REVIEW     REVIEW
         REVIEWER                                          OF RULE     REC'D      DATE       CODE
     ..............................................................................................

                                                       MAJ AFT NPRM  07/12/84  07/16/84       1

    TITLE: PROVISIONAL LISTING OF D&C ORANGE NO. 17, D&C RED NO. 19,
           AND D&C RED NO. 37 FOR USE IN EXTERNALLY APPLIED DRUGS AND
           COSMETICS, POSTPONEMENT OF CLOSING DATES

                                                       MAJ AFT NPRM  07/12/84  07/16/84       1

    TITLE: PROVISIONAL LISTING OF FD&C RED NO. 3 & OF FD&C YELLOW NO.
           5 IN COSMETICS & EXTERNALLY APPLIED DRUGS & OF THEIR LAKES
           IN FOOD & INGESTED DRUGS, PROVISIONAL LISTING OF FD&C

                                                       MAJ AFT NPRM  12/13/84  02/21/85       1

    TITLE: NEW DRUG AND ANTIBIOTIC REGULATIONS

              COUNT OF REVIEWS FOR AGENCY: 3
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REGULATORY REVIEW LIST BY AGENCY
FOR PERIOD 01/01/81 THRU 04/18/86

Department of Health and Human Services
Health Care Financing Administration

("*" INDICATES REVIEW COMPLETED BY DEFAULT)

REVIEWER	CLASS OF RULE	DATE REC'D	REVIEW DATE	REVIEW CODE
TITLE: REDUCTION IN PAYMENTS TO THE STATES (BPO-26-FC)	MAJ NO NPRM	09/24/81	09/28/81	1
TITLE: DETERMINATION OF REASONABLE CHARGES (BPP-137-FC)	MAJ AFT NPRM	12/16/81	12/23/81	2
TITLE: END STAGE RENAL DISEASE PROGRAM - INCENTIVE REIMBURSEMENT FOR DIALYSIS SERVICES *	MAJ AT NPRM	12/29/81	02/09/82	2
TITLE: SURVEY AND CERTIFICATION OF HEALTH CARE FACILITIES	NONMAJ NPRM	04/13/82	05/17/82	2
TITLE: BPP-215-FC LIMITATION OF REASONABLE CHARGES FOR SERVICES IN HOSPITAL OUTPATIENT SETTINGS	MAJ NO NPRM	09/23/82	09/28/82	2
TITLE: PAYMENT FOR SERVICES OF PHYSICIANS IN INSTITUTIONAL PROVIDERS BPP-192-P	MAJ AT NPRM	09/27/82	09/29/82	1
TITLE: MEDICAID MANAGEMENT INFORMATION SYSTEMS, CONDITIONS OF APPROVAL AND REAPPROVAL AND PROCEDURES FOR REDUCTION OF FEDERAL FINANCIAL PARTICIPATION (BPO-11-P)	MAJ AT NPRM	12/20/82	02/18/83	2
TITLE: LIMITATIONS ON PAYMENT FOR SERVICES FURNISHED TO EMPLOYED AGED AND THEIR SPOUSE (BPP-235-FC)	MAJ NO NPRM	12/28/82	02/26/83	2
TITLE: PAYMENT FOR PHYSICIAN SERVICES FURNISHED IN HOSPITALS, SNFS, AND CORF'S (BPP-192-FC) *	MAJ AFT NPRM	02/02/83	02/16/83	1

REGULATORY REVIEW LIST BY AGENCY
FOR PERIOD 01/01/81 THRU 04/18/86

Department of Health and Human Services
Health Care Financing Administration

(*** INDICATES REVIEW COMPLETED BY DEFAULT)

REVIEWER	CLASS OF RULE	DATE REC'D	REVIEW DATE	REVIEW CODE
	MAJ AFT NPRM	02/07/83	03/09/83	1
TITLE: BPP-9-F, HOSPITAL INSURANCE ENTITLEMENT AND BENEFITS				
	MAJ AFT NPRM	03/29/83	04/28/83	1
TITLE: PROSPECTIVE REIMBURSEMENT FOR DIALYSIS SERVICE AND APPROVAL OF SPECIAL PURPOSE RENAL DIALYSIS FACILITIES (BPP-126-F) *				
	MAJ NO NPRM	08/12/83	08/26/83	2
TITLE: PROSPECTIVE PAYMENTS FOR MEDICARE INPATIENT HOSPITAL SERVICES (BERC-263-IFC)				
	MAJ NO NPRM	01/03/84	01/05/84	2
TITLE: PROSPECTIVE PAYMENTS FOR MEDICARE INPATIENT HOSPITAL SERVICES (BERC-263-F)				
	MAJ AFT NPRM	12/10/84	01/07/85	2
TITLE: PAYMENT TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS (BERC-247-F)				
	MAJ AT NPRM	05/15/85	05/17/85	2
TITLE: BERC-338-P, LIMIT ON PAYMENTS FOR DIRECT MEDICAL EDUCATION COSTS				
	MAJ AFT NPRM	06/28/85	06/28/85	1
TITLE: SCHEDULE OF LIMITS ON HOME HEALTH AGENCY COSTS PER VISIT FOR COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1985 *				
	MAJ AFT NPRM	06/28/85	06/28/85	1
TITLE: BERC-338-F, LIMIT ON PAYMENTS FOR DIRECT MEDICAL EDUCATION COSTS *				
	MAJ AFT NPRM	08/28/85	08/28/85	2
TITLE: CHANGES TO THE PROSPECTIVE PAYMENT SYSTEM AND FISCAL YEAR 1986 RATES				

REGULATORY REVIEW LIST BY AGENCY
FOR PERIOD 01/01/81 THRU 04/18/86

Department of Health and Human Services
Health Care Financing Administration

("*" INDICATES REVIEW COMPLETED BY DEFAULT)

REVIEWER	CLASS OF RULE	DATE REC'D	REVIEW DATE	REVIEW CODE
	MAJ AFT NPRM	02/12/86	03/05/86	2
TITLE: MEDICARE AND MEDICAID - PAYMENT FOR THE COSTS OF MALPRACTICE INSURANCE				
	MAJ AFT NPRM	02/14/86	02/14/86	1
TITLE: PROCEDURES FOR DETERMINING WHETHER PROVIDERS, PRACTITIONERS, OR OTHER SUPPLIERS OF SERVICES ARE LIABLE FOR CERTAIN NONCOVERED SERVICES (BERC-273-F)				
TITLE: PAYMENT FOR INDIRECT COSTS OF MEDICAL EDUCATION (BERC-376-F) *	MAJ AT NPRM	02/20/86	02/21/86	1

COUNT OF REVIEWS FOR AGENCY: 21

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                                  REGULATORY REVIEW LIST BY AGENCY                                  PAGE   5
                                FOR PERIOD 01/01/81 THRU 04/18/86                                   04/18/86

Department of Health and Human Services
Social Security Administration                                   ("*" INDICATES REVIEW COMPLETED BY DEFAULT)
.............................................................................................................
                                                          CLASS       DATE      REVIEW    REVIEW
          REVIEWER                                       OF RULE     REC'D      DATE      CODE
.............................................................................................................

                                                      MAJ NO NPRM   09/04/81  09/16/81     2
     TITLE: AID TO FAMILIES WITH DEPENDENT CHILDREN

                                                      MAJ AFT NPRM  01/11/82  02/01/82     2
     TITLE: 45 CFR PARTS 205, 206, 233, 234, 235, 236, 238 AND 239
            AID TO FAMILIES WITH DEPENDENT CHILDREN

                                                      MAJ AFT NPRM  08/29/84  10/03/85     2
     TITLE: MEDICAL SUPPORT ENFORCEMENT

                                                      MAJ AT NPRM   10/31/84  01/25/85     2
     TITLE: 20 CFR 404, SUBPART P, LISTING OF IMPAIRMENTS - MENTAL
            DISORDERS

                                                      MAJ AT NPRM   03/04/85  06/19/85     2
     TITLE: 20 CFR PART 404, SUBPARTS C, D, AND E
            20 CFR PART 416, SUBPART D

                                                      MAJ AFT NPRM  09/17/85  11/06/85     2
     TITLE: 20 CFR PART 404 AND 20 CFR PART 416--STANDARD OF REVIEW FOR
            TERMINATION OF DISABILITY BENEFITS, REVISED RULES FOR
            CERTAIN MEDICAL CESSATION CASES

                                                    . MAJ AFT NPRM  11/29/85  01/29/86     2
     TITLE: 20 CFR 404, SUBPARTS C, D, AND G

            COUNT OF REVIEWS FOR AGENCY: 7

            COUNT OF REVIEWS FOR DEPARTMENT: 31

            TOTAL COUNT OF ALL REVIEWS: 31
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Mr. **Roybal.** OMB has the general responsibility for coordinating federal statistical policy, including data collection on Hispanics required by P.L. 94-311.

How is OMB handling that responsibility? What is OMB doing to monitor agency compliance and to inventory the data collected?

Mr. **Miller.** Section 3 of P.L. 94-311 states that ". . . The Director of the Office of Management and Budget, in cooperation with the Secretary of Commerce and with the heads of other data-gathering Federal agencies, shall develop a government-wide program for the collection, analysis, and publication of data with respect to Americans of Spanish origin or descent. . . ."

An extensive program to collect, analyze, and publish data on Americans of Spanish origin or descent was developed in the late 1970s. Now, as part of its responsibilities under the Paperwork Reduction Act of 1980, OMB reviews all Federal data collections on a regular basis and uses these reviews to make sure that useful and accurate data are collected on Americans of Spanish origin or descent.

Mr. **Roybal.** What OMB resources are devoted to P.L. 94-311 activities?

Mr. **Miller.** Many OMB employees are involved, including staff of the Office of Information and Regulatory Affairs (OIRA) and budget examiners. OIRA's statistical policy staff together with OIRA's desk officers, responsible for the major statistical agencies, in consultation with the budget examiners, all review data collections that gather information on Americans of Spanish origin or descent.

Mr. **Roybal.** Can you specifically detail the compliance of the various agencies with P.L. 34-311?

Mr. **Miller.** In the 1986 National Content Survey for the 1990 Census of Population and Housing, the Bureau of the Census is testing alternative questions to identify Americans of Spanish origin or descent. The 1986 test census of central Los Angeles County includes Spanish-language questionnaires, designed to facilitate self-response by Americans of Spanish origin or descent. OMB reviewed these Spanish-language questionnaires and asked the Census Bureau to keep track of the demand for such questionnaires in the test census.

The Bureau of Labor Statistics, the National Center for Health Statistics (NCHS), the Bureau of Justice Statistics, the Department of Housing and Urban Development, and the Bureau of the Census all collect data on Ameicans of Spanish origin or descent through large demographic surveys. The Current Population Survey (CPS) doubles the Hispanic sample for the March survey in order to increase the reliabillity of the data. In January 1985, new statistical estimates for the Hispanic population (by age and sex) were introduced in the estimation process for the CPS, the Survey of Income and Program Participation and the American Housing Survey; this has improved the quality of the Hispanic data from these surveys.

The data collection for the Hispanic Health and Nutrition Examination Survey (HANES) sponsored by NCHS was completed recently. This survey will provide new information on the health and nutrition status of three groups of Americans of Spanish origin or descent: 7,500 Mexican Americans were examined in the South West, 2,500 Puerto Ricans in the New York area, and 1,000 Americans of Cuban origin in Miami. The first results of this study for the Mexican American population were presented last Fall; all the data are expected to be released by the end of 1986.

Mr. **Roybal.** The Comptroller General's December 1985 report on the Federal Managers' Financial Integrity Act says that there continues to be widespread weaknesses in the internal controls and financial management systems of the government resulting in wasteful spending, poor management and losses of billions of dollars. What steps will OMB be taking to assure that these deficiencies are corrected?

Mr. **Miller.** Federal agencies disclosed some 335 weaknesses in internal control systems in their 1985 reports to the President and the Congress under the Federal Managers Financial Integrity Act. GAO in its report revealed 4 additional weaknesses and cited losses of billions of dollars. We were not able to confirm the GAO estimate of potential losses, but we do agree that much more needs to be done by the agencies to correct known weaknesses in internal control. Our Financial Integrity Task Force is working with each agency on implementation of its corrective action plan, and we are highlighting internal control progress in our management review of agency operations. In addition, we have set up a clearinghouse to exchange information among agencies on best practices, and we are assisting in extensive training programs for agency personnel.

Mr. **Roybal.** The Comptroller General's report also says that at the end of 1984, of 427 accounting systems reviewed, 226 (or 53%) were not in conformance or not known to be in conformance with the Comptroller General's principles and standards. Why has this occurred and what should be done about it?

Mr. **Miller.** The Comptroller General standards were revised in October 1984, and our Circular A-127, "Financial Management Systems," in December 1984. Last year was the first time agencies reported under these new guidelines, and it is not surprising that many systems had not yet been brought into conformance. Our Financial Integrity Task Force is working with the agencies on their implementation plans and we believe this year's reports will show a significant improvement over 1985.

Mr. **Roybal.** The federal government has been criticized for its antiquated financial management processes and systems which do not provide timely, reliable and consistent information for policy formulation and management control. What is OMB doing to improve the quality of our financial systems and what more needs to be done?

Mr. **Miller.** Our Circular A-127, "Financial Management Systems," lays out policy for implementing appropriate financial management standards such as accuracy, timeliness, etc., as well as for:

An agency-wide integrated financial system conforming to the Circular;
Single entry and sharing of data;
Funds expended only for conforming systems;
New systems to be "off-the-shelf" or developed on an interagency basis.

In addition, we have issued detailed guidelines for systems in our "Financial Management and Accounting Objectives" in March 1985 and in our "Guidelines for Evaluating Financial Management and Accounting Systens" in May 1985. The Circular and the guidelines set the policy, our Financial Integrity Task Force follows up on implementation, and we keep top management attention focused on the need for improvement through our annual management review of operations.

Mr. **Roybal.** Critics, including the Grace Commission, have questioned whether the management and budget sides of OMB are compatible and can co-exist in the same agency. Of necessity, management improvements must take a long-term view of expenditures and payoffs, while budget analysts are looking for ways to save money in the current budget to meet deficit targets. How can OMB reconcile these two competing demands?

Mr. **Miller.** The management and budget sides of OMB work together on many issues. For example, management and budget staff confer on expenditures that have management implications, such as computer systems. There are other areas of common concern, such as credit policy, and the two staffs work closely on them. The purpose of the management hearings held with the agencies is to determine what the management priorities will be. The decisions from these hearings, which are held before the budget hearings, are fed into the budget process. Finally, an important part of the management side's role is ensuring that policies developed in the budget are in fact implemented.

Mr. **Roybal.** Bills have been introduced in both the Senate and the House to establish a chief financial administrator for the federal government. What is OMB's position on this proposal?

Mr. **Miller.** We appreciate any legislative support we can get to improve financial management in the Federal Government. The Senate and House bills to establish a chief financial administrator are being reviewed by OMB and circulated by us for agency comment. When the analysis is completed and comments reviewed, we hope to have the opportunity to work with the Congress on aspects of the bills that we can support, and to develop legislation that would really benefit financial management.

Mr. **Roybal.** What are OMB's highest priorities for financial management over the next 5 years?

Mr. **Miller.** Our highest financial management priorities right now, and for the next several years, are: credit management and debt collection; internal control and accounting systems; cash management; payment integrity; single audit.

Mr. **Roybal.** Do you believe adequate resources have been directed toward correcting the management and financial systems problems we are facing?

Mr. **Miller.** We believe agencies have adequate resources for making necessary improvements in their management and financial systems. We have urged them to pursue the most cost-effective measures for making these improvements such as using "off-the-shelf" software with existing hardware, relying on services provided by other agencies, or adapting systems already developed by other agencies.

Mr. **Roybal.** Why did OMB refuse to approve a form proposed by the Committee for Purchase for the Blind and Other Severely Handicapped to obtain employment information regarding the blind and handicapped?

Mr. **Miller.** In July 1985, OMB disapproved, under its Paperwork Reduction Act authority, a request made by the Committee to change an existing form used for reporting labor hours of blind and handicapped individuals employed by special nonprofit agencies. The report is used to determine eligibility, based on the proportion of work performed by such individuals in relation to other employees, for special treatment in government procurement for commodities produced by nonprofit agencies for the blind and other severely handicapped. The Committee proposed to change the existing practice of requiring a report of total paid hours of employment. Under the Committee's proposed change, employers would have to differentiate in the report between hours of employment for actual work and hours of paid vacations, sick leave and holidays. The Committee could make no case that the increased reporting burden imposed on employers—in terms of changing their records systems to produce data for the new report—would result in any change in eligibility for special procurement treatment. OMB received complaints from employers who report to the Committee about the difficulty and cost associated with the proposed change. On taking these factors into consideration, we disapproved the new report under our Paperwork Reduction Act authority as not using the least burdensome approach for proper performance of an agency's functions and not having practical utility. Our disapproval did not affect continued use of the existing form by the Committee.

HEARING ON:

FISCAL YEAR 1987 APPROPRIATIONS REQUEST
OFFICE OF MANAGEMENT AND BUDGET

BEFORE THE
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

WITNESSES:

JAMES C. MILLER III, DIRECTOR

JOSEPH R. WRIGHT JR., DEPUTY DIRECTOR

JEFFREY A. EISENACH, EXECUTIVE ASSISTANT TO THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Justification of Estimates
for the 1987
Appropriations Request

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I. Appropriations Language

1987 Regular Appropriations

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

SALARIES AND EXPENSES

For necessary expenses for the Office of Management and Budget, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109; $39,682,000.

II. General Statement

SUMMARY

The Office of Management and Budget requests a fiscal year 1987 appropriation of $39,682,000. This request compares with the Office's enacted 1986 appropriation of $35,695,000. It represents the essential resources needed for OMB to assist the President in his budgetary, management, and other executive responsibilities.

OMB RESPONSIBILITIES

The Office of Management and Budget (OMB) derives its basic authority from the Budget and Accounting Act of 1921, as amended. This Act, in providing the first comprehensive national budget system, gave the Bureau of the Budget the authority to assemble, correlate, and recommend changes to the requests for appropriations of the several departments or establishments. The Bureau was further authorized to make those detailed administrative studies which would help in securing greater economy and efficiency in the conduct of the public service.

In response to a request by the Chairman of the Appropriations Committee, President Harding in 1921 instructed the Federal agencies to submit to him, through the Director of the Bureau, all requests or recommendations for legislation which would require appropriations presently or in the future. This clearance procedure was later extended to all legislation. The above and other statutory requirements (listed in Chapter VII) require a set of functions to be performed by OMB.

OMB, which was created from the Bureau by Reorganization Plan No. 2 of 1970, also now provides the President with an institutional staff capability in executive management, particularly in program evaluation and coordination, management reform, regulatory analysis, and information and management systems.

FUNCTIONS AND ORGANIZATION

The functions of the Office of Management and Budget include the following:

- To advise the President on fiscal and economic policies for the nation.
- To prepare the budget and formulate the Government's fiscal program.
- To supervise and control the administration of the Executive Branch budget.
- To examine the management and administrative systems of the Executive Branch, to establish policies that will assure the efficient operation of the Federal Government.
- To evaluate the performance of Federal programs.
- To encourage interagency and intergovernmental cooperation and coordination.
- To clear and coordinate departmental recommendations for proposed legislation and for Presidential action on bills passed by Congress.
- To assist in the consideration, clearance, and preparation of Executive Orders and proclamations.
- To keep the President advised of agencies' activities – proposed, initiated, and completed; and to coordinate interagency activities to assure that funds appropriated by the Congress are spent with minimum duplication.

- To provide overall direction of procurement policies, regulations, and procedures for executive agencies.
- To develop and manage programs to improve the quality, efficiency, and performance of acquisition and procurement personnel.
- To implement and monitor new initiatives on information policy, paperwork reduction and regulatory reform.
- To establish policies and methods that reduce fraud, waste, and abuse in Federal programs, including provision of staff support to the President's Council on Integrity and Efficiency and the President's Council on Management Improvement.

More detailed organizational information is provided in Chapter V.

1987 BUDGET REQUEST

The President has requested $39,682,000 for OMB in fiscal year 1987. Approximately 86 percent of this request is for personnel compensation, standard level user charges (SLUC), printing for the President's budget, and text and data processing support. An additional three percent of the request is for telephone service, postage, utilities, and equipment rentals. The remaining 11 percent of the request is for staff travel and training, background investigations, ADP and other equipment purchases, and office supplies.

The President's request for 1987 is $849,000 (or 2%) above OMB's 1985 operating level. This request reflects increases associated with within-grade increases and promotions for staff, inflationary increases to existing contacts and additional resources to meet the increased work requirements by Gramm-Rudman-Hollings. The 1987 request reflects the necessary amount needed for OMB to continue to provide the President with support in the area of budget, regulatory, and other executive responsibilities. Funding OMB below the request level would have a dramatic impact on the agency's ability to provide the President with the necessary support.

- *Personnel Compensation and Benefits*. The increase of $529,000 from 1985 will be used to fund authorized positions which have remained vacant during 1986 and for staff promotions and within grade increases. The number of authorized positions will still be reduced by 14. Since 1977, the number of positions in OMB has decreased by 102 (or 15%).

- *Travel*. This request is $5,000 less than OMB's 1985 request level and $85,000 (20%) less than what was spent in 1981. Over the past four years, we have tried to make the most of our travel funds by providing funding primarily to new examiners to travel and get first-hand knowledge of their programs. Travel for conference and other administrative purposes has been kept to a minimum.

- *Communications/Utilities/Other Rents*. This request is $135,000 less than OMB's 1985 actual expenditures. Except for the 1986 estimated costs, this request level will be the least spent by OMB since 1976. The amounts spent in this area has declined each of the last five years, decreasing $816,000 (41%) since 1981. The procurement of a new telephone system and other types of leased equipment have helped to lower costs in this area.

- *Printing*. The 1987 request is $126,000 higher than the 1985 operating level, but is still $495,000 (29%) below the 1981 operating level. This increase is due primarily to increased printing and Federal Register costs associated with the implementation of Gramm-Rudman-Hollings. Costs in this area have been cut about as much as possible. Our request will fund such items as the printing of the President's Budget, publishing in the Federal Register and printing OMB circulars and bulletins. These items are basic to our mission and do not provide cost savings.

- *Supplies and Equipment*. The request is $68,000 (5%) above the 1985 operating levels. The increase will be used for the procurement of office/ADP supplies and purchases of ADP equipment.

- *Other Services*. This request is $179,000 above OMB's 1985 level. The increase is primarily attributable to the need for increased ADP activities in support of Gramm-Rudman-Hollings activities. In real terms, OMB's 1987 request is $2.2 million (26%) below the 1980 operating level.

III. Summary Tables

BUDGET OVERVIEW
(in thousands of dollars)

	1985	1986	1987
Budget Authority	38,852	35,695	39,682
Obligations	38,833	35,695	39,682
Outlays	39,754	36,651	39,357

	Fiscal Year	Authorized Positions
Full-Time Permanent Employment	1977	682
	1982	604
	1983	604
	1984	604
	1985	594
	1986	594
	1987	580

OFFICE OF MANAGEMENT AND BUDGET
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

	1985 Actual	1986 Est.	1987 Est.
Program by activities:			
1. Budget review	5,475	5,146	5,653
2. National security and international affairs	5,648	5,520	5,844
3. Economics and government	4,238	4,159	4,298
4. Natural resources, energy and science	5,184	5,134	5,342
5. Human resources, veterans and labor	4,429	4,235	4,540
6. Director's Office	4,616	4,454	4,662
7. Management	3,860	3,525	3,935
8. Information and regulatory affairs	5,383	5,126	5,408
Total program costs, funded-obligations	38,833	37,299	39,682
Financing:			
Unobligated balance lapsing	19	—	—
Budget authority:			
Appropriation	38,852	37,299	39,682
Gramm-Rudman-Hollings Cut	—	1,604	—
Appropriation (adjusted)	38,852	35,695	39,682
Relation of obligations to outlays:			
Obligations incurred, net	38,833	35,695	39,682
Obligated balance, start of year	5,537	4,244	3,288
Obligated balance, end of year	-4,244	-3,288	-3,615
Adjustments in expired accounts	-372	—	—
Outlays	39,754	36,651	39,357

Object Classification (in thousands of dollars)

	1985 Actual	1986 Est.	1987 Est.
Personnel Compensation:			
Full-time permanent	22,039	21,904	22,550
Other than full-time permanent	835	610	835
Other personnel compensation	538	490	538
Special personnel services payments	48	45	48
Total Personnel Compensation	23,460	23,049	23,971
Personnel benefits: civilian	2,520	2,350	2,538
Travel and transportation of persons	263	345	345
Standard level user charges	5,227	5,227	5,227
Communications, utilities and other rent	1,310	1,100	1,175
Printing and reproduction	1,066	1,100	1,192
Other services	3,716	3,378	3,895
Supplies and materials	507	550	575
Equipment	764	200	764
Sub-Total	38,833	37,299	39,682
Less: Gramm-Rudman-Hollings Cut	—	1,604	—
Total Obligations	38,833	35,695	39,682

PERSONNEL SUMMARY

Total number of Full-time permanent positions	594	594	580
Total compensable workyears: Full-time equivalent employment	557	604	590
Full-time equivalent of overtime and holiday hours	6	6	6
Average ES salary	67,313	63,902	67,902
Average GS grade	11.3	11.3	11.3
Average GS salary	41,252	41,613	41,613

SUMMARY OF INCREASES FROM 1985 TO 1987

(In thousands of dollars by object classification).

Fiscal Year 1985:		
1985 Actual Expenditures		$38,833
Fiscal Year 1985 Base		$38,833
Increases/Decreases:		
• Personnel and benefits	529	
• Travel	82	
• Standard level user charges	0	
• Communications, utilities, other rents	(135)	
• Printing	126	
• Other services	179	
• Supplies	68	
• Equipment	0	
• Net increase 1985–1987		849
1987 Budget Request		$39,682

DISTRIBUTION OF PERMANENT POSITIONS

The distribution of permanent positions assigned to each OMB unit is as follows:

	1986 Allocation	1987 Allocation
1. Office of the Director	76	75
2. Budget Review	83	80
3. National Security and International Affairs	84	82
4. Human Resources, Veterans and Labor	70	68
5. Economics and Government	70	67
6. Natural Resources, Energy and Science	80	79
7. Information and Regulatory Affairs	79	78
8. Management Activities	52	51
TOTAL OMB	594	580

IV. Detailed Cost Justification by Object Classification

PERSONNEL COMPENSATION (OBJECT CLASSIFICATION 11), $23,971,000

The 1987 request will restore one-half (or $646,000) of the Presidents proposed 5 percent pay cut which was not enacted. OMB, unlike other government agencies, did not receive restoration for this amount in the 1986 budget. The remainder of the increase in personal costs will restore OMB to its 1985 level for nonpermanent personnel costs, overtime and other personnel costs. A maximum of $12,000 of the request will be used to hire consultants only when a special expertise is needed and it is more cost effective to hire a consultant than it is to bring a person on board permanently.

Summary of Personnel Costs
(in thousands of dollars)

	1985	1986	1987
Permanent personnel costs	$22,039	$21,904	$22,550
Nonpermanent personnel costs	835	610	835
Overtime & other personnel costs	586	535	586
Total personnel costs	$23,460	$23,049	$23,971

*Does not include impact of costs due to Gramm–Rudman–Hollings of $1.6 million cut, approximately $700,000 will come from personnel.

PERSONNEL BENEFITS (OBJECT CLASSIFICATION 12), $2,538,000

This request is for OMB's mandatory contributions to the Civil Service Retirement System, the Social Security Retirement and Medicare programs, the Federal Group Life Insurance program, and the Federal Employees Health Benefits program.

TRAVEL AND TRANSPORTATION OF PERSONS (OBJECT CLASSIFICATION 21), $345,000

This request provides travel funds for the examination of executive branch activities outside Washington, D.C., and for other official business by OMB staff. This level of funding is $33,000 less than that expended in 1976. Since that time, reimbursements for per diem and high cost areas have increased 50% and 43%, respectively. Consequently, the current request is, in real terms, well below the 1976 levels. 1986 travel will be severely restricted due to budget cuts. Our 1987 request will restore us approximately to our 1985 request level.

STANDARD LEVEL USER CHARGES (OBJECT CLASSIFICATION 23.1), $5,227,000

This estimate represents payments made to the General Services Administration (GSA) for rental of office space in the Old and New Executive Office Buildings. The rates used are those mandated by GSA for space currently occupied. Standard level user charges (SLUC) will remain the same in 1987 as they are in 1986. During the past five years, OMB has reduced the square footage occupied by approximately 44,000 sq. ft. or 22%.

COMMUNICATION, UTILITIES AND OTHER RENT (OBJECT CLASSIFICATION 23.2), $1,175,000

This estimate includes the cost of operating the Executive Office joint telephone switchboard, including salaries of telephone operators, local telephone service costs of the Federal Telecommunication Service (FTS) and postage. Also included in this estimate are costs associated with (1) rental of duplicating, word processing ADP, and other equipment; and (2) reimbursement to GSA for furnishing after-hour utilities. This request level is $816,000 (41%) below the FY 1981 operating level.

PRINTING AND REPRODUCTION (OBJECT CLASSIFICATION 24), $1,192,000

This request covers the cost of publishing in the Federal Register; work done by the Government Printing Office (GPO), principally the printing of the President's budget documents and related materials, forms and binding, and other work which cannot be handled by the Office of Administration's duplicating facilities. This request is slightly higher than the 1986 estimate due to additional printing and Federal Register costs associated with Gramm-Rudman-Hollings, as well as costs to print the Regulatory Program of the U.S. Government. This request level is still approximately $495,000 (29%) below the FY 1981 operating level.

OTHER SERVICES (OBJECT CLASSIFICATION 25), $3,895,000

This request includes charges for: (1) the development of various computer information systems, (2) computer time-sharing, (3) personnel security investigations conducted by the Office of Personnel Management, (4) OMB's share of maintaining an employee health program, (5) maintenance agreements and repairs to equipment, (6) training, and (7) other miscellaneous services. The increase in our 1987 request will be used to restore our ADP support to historical levels, accommodate additional expenses associated with Gramm-Rudman-Hollings and also provide funding to increase the number of agencies who submit budget data electronically. However, the current request level is still $411,000 (10%) below the 1980 operating level.

SUPPLIES AND MATERIALS (OBJECT CLASSIFICATION 26), $575,000

This estimate is for the purchase of normal office and ADP supplies and additional work materials, such as legislative bills, reports, enacted legislation, and periodicals. This request level will provide for normal cost increases associated with ADP suppliers.

EQUIPMENT (OBJECT CLASSIFICATION 31), $764,000

This request covers the purchase of office equipment, including data and word processing terminals, communications hardware and software, and related peripheral equipment. These funds will be used to begin replacing older, used machines, especially an obsolete word processing system, where maintenance is no longer cost effective. They will also be used to purchase leased equipment when it becomes more cost effective to buy rather than continue to lease. This request level will restore funding to the 1985 level.

V. Statement of Functions and Workload

The variety and complexity of the work of the Office of Management and Budget in functioning as staff to the President is enormous and cannot easily be summarized in a brief statement. A brief description of workload responsibilities in the Office of the Director is set forth below.

OFFICE OF THE DIRECTOR

The Office of the Director consists of the Director, Deputy Director, Executive Associate Director, Executive Assistant to the Director, and their assistants and support personnel. The Office also includes the Economic Policy, Legislative Affairs, General Counsel, Communications and Public Affairs, Administrative and Legislative Reference units. A brief description of each staff office follows:

ECONOMIC POLICY

The Office of Economic Policy assists the Director in developing overall fiscal and monetary policies and represents OMB in the development of Administration economic policies. The office makes economic forecasts, analyzes the economic impact of Federal policies and programs, reviews tax proposals for fiscal and specific effects, and reviews tax expenditures. The office also assists in the development of OMB's contributions to Cabinet Council activities, analyzes long-term government-wide policies, and prepares fact sheets and other explanatory documents.

LEGISLATIVE AFFAIRS

The Office of Legislative Affairs coordinates all OMB activities that relate to the Senate or House of Representatives. The office works with Congress to enact portions of Federal budget and other key Presidential legislative and management initiatives; maintains working relationships with members, committees, and staff of Congress; provides policy advice to the Director and his key policy associates; maintains liaison with the White House Legislative Affairs Office; alerts agency congressional liaison officers to legislative problem areas and works with them to resolve the difficulties; and coordinates responses to congressional requests for information.

GENERAL COUNSEL

The Counsel's Office provides legal advice to the Director and OMB staff, clears proposed Executive Orders and proclamations, participates in the development of policy and legislative proposals to be sponsored by OMB or which affect the performance of OMB's own functions, and performs any additional legal functions assigned by the Director.

COMMUNICATIONS AND PUBLIC AFFAIRS

This office deals with the information media and key public/private sector groups, and coordinates information efforts with other government agencies. In addition, the office serves as liaison between OMB and the White House Press Office.

ADMINISTRATION OFFICE

As the principal assistant for office management, the Assistant Director for Administration oversees OMB's internal management activities and serves as liaison between OMB and the Office of Administration regarding personnel, financial, computer, administrative support, and other central staff services.

This office prepares and executes OMB's budget, prepares internal accounting reports, and provides financial guidance and assistance to the divisions. The office also reviews and clears OMB issuances; coordinates OMB action on GAO reports; oversees organization, staffing, and security; ensures compliance with the Ethics in Government, Freedom of Information, and Privacy Acts; and serves as Executive Secretary to the Senior Executive Service, Executive Resources and Performance Review Boards.

LEGISLATIVE REFERENCE DIVISION

The Legislative Reference Division coordinates the review and analysis of Executive agency legislative proposals and agency reports including testimony on pending legislation; advises the agencies as to the relationship of their proposals and reports to the President's program; and clears such proposals and reports for transmittal to Congress. The Division informs congressional committees of the relationship of pending legislation to the President's program, participates in the development of the President's legislative program, and prepares memoranda to the President on enrolled bills. These activities affect all organizational units of OMB, since the specialist in each program or functional area are called upon to assist in the review, analysis, and clearance of agency legislative proposals, reports, and testimony; in the preparation of replies to congressional committee requests for OMB's views on pending legislation, and in the handling of enrolled bills.

The following table furnishes recent data on the volume of some of the workload involved in the Legislative Reference Division. The table does not include all legislative coordination and clearance functions of the Division, such as requests for information and the coordination of agency views on other agencies' testimony.

	97th Congress	*98th Congress*	*99th Congress (1st Session)*
Congressional request for OMB views	3,256	2,549	1,338
Agency reports and testimony for clearance	4,563	4,453	2,096
Agency draft bills	932	780	540
Enrolled bills	542	699	244
TOTAL	9,293	8,481	4,218

MAJOR WORKLOAD IN 1986

The major tasks of these offices include:

- The overall management of the Office of Management and Budget.
- Short and long-range economic forecasting, economic analyses, fiscal analyses, and special economic studies; representing the OMB in the Administration's economic planning councils.
- Providing a central inquiry and referral point for thousands of Congressional inquiries, both written and oral.
- Representing OMB on Capitol Hill in support of the Administration's economic and budgetary recommendations, with a particular focus on the Congressional budget process.
- Providing legal advice to OMB officials and staff; coordinating and clearing proposed Executive Orders and proclamations.
- Handling thousands of inquiries from the press and general public regarding OMB activities and publications; preparing speeches; organizing briefings for visitors and press officials; preparing general descriptive materials about the agency's operations.
- Administering systems for the effective operation of personnel, budget, accounting, procurement, automated systems, publishing, office space and other administrative support systems necessary to the daily OMB operations.

BUDGET REVIEW DIVISION

The Budget Review Division has the lead staff role in the exercise of the Office's responsibilities for the preparation of the Federal budget. The Division's responsibilities include coordination of the executive branch budget process; development and improvement of the Federal budget formulation and execution systems; provision of up-to-date information on the legislative status of the Administration's budget proposals; preparation of the sequestration report of the Director required by the Balanced Budget and Emergency Deficit Control Act of 1985; coordination of the preparation of the President's budget and the rescission and deferral messages required by Title X of the Congressional Budget and Impoundment Control Act; development and operation of the system for controlling Federal civilian employment in the executive branch; analysis of economic and budgetary projections; development of economic assumptions for budget estimates; liaison with the legislative and judicial branches on matters related to the budget process; and maintenance of an up-to-date data base on executive and legislative budget actions.

MAJOR WORKLOAD IN 1986

The Division's major workload activities in 1986 are:

— Maintenance of an orderly budget process despite the continued increase in complexities of the budget and a continued, very large workload.

— Preparation of the annual budget documents, revised budget documents, summary tables, scorekeeping reports, and other supporting materials.

— Preparation, jointly with the Congressional Budget Office, of the sequestration reports required by the Balanced Budget and Emergency Deficit Control Act to be submitted on January 15 and August 20.

— Extensive tracking and analysis of the budget resolution, the Deficit Reduction Act, and appropriations bills.

— Continued development of automated systems for a variety of tasks, including reviewing legislative policy options and tracking the development of budget totals through the budget process.

— Development of budget reform proposals.

— A continuing review of Federal credit policy, emphasizing guidelines recently issued in a revised Circular No. A–70.

— Coordination of PPSSCC recommendations and other management initiatives, with emphasis on the requirements of the Deficit Reduction Act of 1984.

— Oversight of GSA's catalog that provides information on Federal assistance programs for the Congress, Federal agencies, State and local governments, the public, and private firms.

— Close attention to controlling Federal employment.

— Application of long-term techniques to improve the use of automation in the preparation and printing of the budget.

— Improved automated systems to estimate the effect of economic and policy variables on the budget.

— Preparation of the annual report on Federal capital infrastructure spending mandated by the Federal Capital Investment Program Information Act.

EXPECTED EMPHASIS FOR 1987

The major emphases for 1987 include:

- **Coordination and completion of the budget process for the 1988 budget and the 1989–1992 planning period, and preparatory work on the 1989 budget.**
- **Continued frequent analysis of legislative action affecting the budget, including budget resolutions and reconciliation and appropriation bills.**
- **Continued review and evaluation of Federal credit policy, efforts to improve Federal credit program management, and the economic impact of Federal credit.**
- **Continuation of the process of controlling employment in the Federal Government using controls based on full–time equivalent employment.**
- **Design and implementation of budget process simplifications and greater use of automation to carry out the steadily increasing workload across the institution.**

NATIONAL SECURITY AND INTERNATIONAL AFFAIRS PROGRAM DIVISIONS

ASSOCIATE DIRECTOR

The Associate Director for National Security and International Affairs provides executive direction and coordination for the following three program divisions: International Affairs Division; National Security Division; and the National Security and International Affairs Special Studies Divisions.

NATIONAL SECURITY DIVISION

The division reviews and examines budget requests, policies, programs, operating methods, and legislative proposals for the Department of Defense, the intelligence agencies and five related agencies. The estimated 1987 expenditures for these agencies total about $300 billion. These agencies employ over 2,000,000 military personnel and about 1 million civilian personnel. The Division conducts in-depth studies in broad mission areas, reviews long-range programs, and conducts special analyses of problem areas, emphasizing program effectiveness, economy of operation, and utilization of resources.

MAJOR WORKLOAD IN 1986

Department of Defense. The Division conducted an extensive review of the entire Defense program in preparation for the 1987 budget presented to Congress in February. In examining the Department of Defense programs, the staff has:

— Identified issues to include a number of questions affecting the treatment of military retirement, military pay and benefits, civilian employment levels, and Defense and intelligence program activities.

— Addressed potential alternatives on a wide range of program and budgetary issues including an assessment of the effect of inflation on the Defense programs and for special Defense commodities, opportunities for managerial improvements within Defense, including weapons acquisition, and improved outlay forecasting.

— Reviewed a large number of legislative proposals affecting the Defense Department, including a number of pay and benefits proposals.

— Provided analyses and rapid responses to numerous Congressional proposals to revise the Administration's Defense program.

Intelligence Agencies. The Division also reviewed the entire intelligence program in preparation for the 1987 budget presented to Congress in February. Division staff work with the staffs of the intelligence agencies and the NSC in the identification and presentation of issues.

EXPECTED EMPHASIS FOR 1987

Major workload items are expected to include:

— Increased emphasis on improved management of the Defense program. Specific projects include continued emphasis on aspects of Defense acquisition, possibilities for contracting out selected activities, and revisions to practices which produce inefficiency in government contracts.

— Major program initiatives will be reviewed. These include the strategic defense initiative, naval force requirements, near term improvements to the readiness of combat forces and the mix of modernization programs in support of overall Administration policies.

— Review of the size and content of the Defense and Intelligence programs for the President's 1987 budget.

— Continued focus on projecting and tracking Defense outlays and the impact of Defense programs on the economy.

INTERNATIONAL AFFAIRS DIVISION

This Division reviews and examines policies, programs, operations, and budgetary issues regarding U.S. diplomatic and consular activities, foreign military and economic assistance, U.S. participation in international multilateral organizations, international trade and finance, and U.S. information and cultural exchange programs. The Division participates in interagency bodies dealing with issues affecting international affairs. The Division also provides staff assistance and advice to the Director, Deputy Director and Associate Director (National Security and International Affairs) in support of their participation in interagency mechanisms that consider international, economic and other policies. The Division covers 22 agencies and programs relating to carrying out international affairs, which are estimated to spend $17 billion for 1986. Their total Federal employment ceiling is over 42,000 work years.

MAJOR WORKLOAD ACTIVITIES IN 1986

— The Division is conducting on-going program, legislative and budget reviews and is supporting the central OMB process for tracking budget requests and legislative proposals as they are acted on by the two Houses of the Congress, their committees, and subcommittees.

— Budget execution duties involve apportioning and reapportioning accounts, preparation of deferral and rescission reports, review of agencies' reprogramming notifications to the Congress, review of Presidential Determinations under the various foreign aid and refugee laws, release of funds from the President's Emergency Refugee Fund, reporting to Congress on use of the Board for International Broadcasting's foreign exchange contingency fund and voluntary contributions to international organizations, and allocating foreign currencies under P.L. 480.

— Substantial effort is being devoted to preparing materials in a variety of formats explaining to Congressional and public audiences the effects of differing international affairs budgetary levels on foreign policy and security goals.

— Division personnel are participating actively in interagency committees and supporting OMB policy officers in such bodies as the Economic Policy Council, the National Security Council, the National Advisory Council on International Monetary Policies, the Arms Transfer Management Group, the Trade Policy Committee, and the Food Aid Subcommittee of the Development Coordinating Committee, and the Board of the Foreign Service. Groups backstopping trade policy formulation are especially active this year.

EXPECTED EMPHASIS FOR 1987

— Continued careful review of international affairs spending initiatives to assure, within an overall stringent fiscal policy, that resources will be adequate for our most pressing foreign policy needs.

— Close collaboration with the Department of State and the National Security Council to assure a comprehensive review of foreign aid budget requests consistent with foreign policy objectives.

— Strengthen efforts to make U.S. foreign aid conditional upon the adoption of sound economic policies in recipient countries and conducive to greater participation by the private sector.

— Major focus on assuring a coherent U.S. policy for international trade through an efficient interagency process.

— Close review of progress in the modernization programs of the Voice of America and Radio Free Europe/Radio Liberty.

— Monitoring of the substantially increased efforts of the State Department to improve security of embassies and consulates abroad.

— Chairing the interagency effort to prepare the second annual report on military trade offsets required by the Defense Production Act.

- Special efforts to work with OMB management divisions to improve the automated financial, personnel, and information systems of the Department of State, U.S. Information Agency, and the Agency for International Development.
- Continued work on modernizing Division operations by achieving more extensive computer applications.

NATIONAL SECURITY AND INTERNATIONAL AFFAIRS SPECIAL STUDIES DIVISION

This Division analyzes selected policy issues concerning national defense and international affairs to provide a better analytical basis for decisions on the budget. The Division also coordinates the analysis, policy development, and implementation of certain crosscutting issues within OMB, the Executive Office of the President, and interagency review groups.

MAJOR WORKLOAD IN 1986

- **Participated in the review and implementation of the National Space Strategy.**
- **Studied the economic competitiveness of the U.S. in world trade.**
- **Reviewed specific trade issues involving economic competitiveness.**
- **Participated in the preparation for bilateral consultations with Japan on trade issues.**
- **Assisted in the implementation of nuclear nonproliferation policy.**
- **Assisted in the preparation of the report required by the Export Administration Act on possible changes in the existing incentives for producing Alaskan oil.**
- **Participated in a review of U.S. government services needed in the Arctic.**
- **Coordinated the preparation of the report required by the Defense Production Act on offset arrangements in international procurements.**
- **Reviewed the impact of inflation on Defense pricing.**
- **Participated in the development of the U.S. government's proposal for studies of the Three Gorges hydroelectric power and flood control project in China.**
- **Analyzed military compensation and retirement issues.**

EXPECTED EMPHASIS FOR 1987

- **The Division will continue studies and policy reviews begun in 1985 and will also initiate work on a number of new projects involving evaluation of defense and international program issues. Efforts currently underway which will continue into 1986 include review of issues concerning:**
    - **International Trade and Competitiveness**
    - **International Research and Development**
    - **International Energy**
    - **Nuclear Nonproliferation**
    - **Defense Pricing**
    - **Offsets in Defense – related exports**
    - **Military and Civilian Compensation**
    - **Space Policy**

HUMAN RESOURCES, VETERANS, AND LABOR PROGRAM DIVISION

ASSOCIATE DIRECTOR

The Associate Director for Human Resources, Veterans, and Labor provides executive direction and coordination for the following three program divisions: Health and Income Maintenance Division; Labor, Veterans, and Education Division, and the Human Resources, Veterans, and Labor Special Studies Division.

HEALTH AND INCOME MAINTENANCE DIVISION

The Health and Income Maintenance Division examines budget requests, operating methods, programs, regulations and statistical policies and legislative proposals for the Department of Health and Human Services, the Department of Agriculture's food and nutrition programs, and several smaller agencies having health and income maintenance functions. These programs include the largest Federal trust funds such as the Old-Age and Survivors Insurance Trust Fund, the Disability Insurance Trust Fund, the Supplemental Medical Insurance Trust Fund, and the financially ailing Hospital Trust Fund. These programs involve over 100 separate budget accounts, 150,000 federal employees, and over $355 billion in outlays—more than 35% of the entire 1986 federal budget.

MAJOR WORKLOAD IN 1986

Development of 1987 budget and legislative proposals, including reforms of Medicare, Medicaid, AFDC, supplemental security income, food and nutrition programs, and other entitlements, including:

Alcohol Abuse and Alcoholism Research Amendments
Drug Abuse Demonstrative Amendments
Medicare/Medicaid Reforms
Immigration Amendments
Refugee Act
Food Stamp Act Amendments
Farm Bill Amendments
Social Welfare Amendments
Child Support Enforcement Amendments
Aid to Families with Dependent Children Amendments
Health Amendments of 1986
Indian Health Amendments
Child Nutrition Act Amendments
Legal Services Corporation Act
School Lunch Act Amendments
Railroad Unemployment Insurance Reforms
Railroad Retirement Reforms
Low Income Home Energy Assistance Amendments
Foster Care, Adoption Assistance and Child Welfare Act Amendments
Head Start Amendments
Native Americans Amendments

Activities associated with the above proposals include monitoring, analysis, and clearance of reports and testimony as the bills move through the Congress.

— Preparation and presentation of 1986 and 1987 Spring Planning and Director's Review issue papers (37 major issue write-ups).

- Health Entitlements:

  Implementation of proposed reforms, including:

  - Review of Medicare/Medicaid legislation (over 30 discrete legislative proposals with total projected savings of $27 billion, 1984–1988).
  - Development of supporting initial review of testimony related to proposals.
  - Tracking of Congressional action (budget resolutions, possible Reconciliation) on Administration proposals and related legislation.
  - Development of alternative proposals in response to Congressional action as needed.
  - Review of regulations implementing enacted legislation.
- Various program functions:
  - Development and review of over 100 legislative proposals, testimony, bill reports, and enrolled bill memos for areas listed above.
  - Review about 20 personnel, supplemental, and budget amendment requests.
  - Annual reviews of over 230 advisory committees and their reports.
  - Technical assistance to agencies.
  - Monitoring of appropriation actions and development of recommendations for Administration positions on appropriation bills.
  - Response to numerous congressional and public inquiries.
  - Apportionments and reapportionments, totaling over 300 (excluding rescissions and deferrals)
  - Regulation reviews and analyses.

EXPECTED EMPHASIS FOR 1987

- Development of budget, legislative, and regulatory proposals for 1987 and beyond.
- Ongoing review, evaluation, and monitoring of agency program policies.
- Updates of the 1987 Budget and development of the 1988 Budget.
- Development of Medicare/Medicaid proposals for the 1988 Budget.
- Development of independent Medicare/Medicaid estimating capacity to check actuarial estimates/produce quick turnaround on alternative proposals.
- Review of major research, demonstration, OBRA, and TEFRA waivers with potentially large program impact, e.g., alternative state rate-setting systems for Medicare.
- Monitor performance of Peer Review Organizations (PROs) in assuring quality of medical care.
- Analyze options to prevent insolvency of the Medicare trust funds.
- User fees analysis in PHS.
- Third party collections for Indian Health Service.
- Analyze medical education funding options.
- Review of biomedical research priorities and implementation of fair share allocated overload policy.
- Development of Foster Care and Adoption Assistance options.
- Reform of Railroad Sickness and Unemployment Insurance program.
- Develop and analyze action to promote lower errors in the administration of public assistance programs.
- Development and implementation of regulation for disability insurance.

LABOR, VETERANS AND EDUCATION DIVISION

This Division has the following principal program areas: education; employment and training; workplace standards; unemployment, private pension, and workers' compensation; labor relations; veterans' benefits and services; the arts and humanities; and domestic volunteer service programs. The Division examines the budget requests, programs, legislative proposals, and operations of the Department of Labor, the Department of Education, the Veterans Administration, and nineteen independent agencies, commissions, and boards. These agencies have total estimated outlays of $66.5 billion and about 242,000 full-time equivalent employees in the President's 1987 budget.

MAJOR WORKLOAD IN 1986

- Helped develop and review over 100 individual legislative proposals, testimony and enrolled bill memos; analyzed and responded to hundreds of congressional and public inquiries; processed nearly 300 apportionments; reviewed for accuracy over 100 Executive Office of the President briefing materials.
- Continued review of the $27 billion program of medical care, education, housing, life insurance, and income assistance for veterans and their dependents. During 1986 a significant effort was made to improve OMB's analyses of VA's: (a) compensation and pension caseload and average benefit forecasts, (b) hospital operations (c) construction project development processes, and (d) modernization of operations.
- Analyzed and helped developed budget recommendations for training and employment programs with outlays estimated at $5.2 billion in 1986 and unemployment, pension, and workers' compensation programs budgeted at $16.5 billion. Also reviewed the budgets of numerous programs located in nine separate, labor-related agencies, with estimated outlays of $1.2 billion in 1986. The programs deal with the collection of employment, price, and wage statistics and the establishment and enforcement of standards that affect the relationship between employers and employees (i.e. minimum wage, overtime pay, equal employment opportunity, welfare and pension plans, job safety and health, and labor-management relations) and between union members and union officials.
- Legislation analyzed in detail included proposals to revise the Federal Employee Compensation Act (FECA), the Black Lung Benefits Revenue Act, the Federal-State Unemployment Insurance system, the Domestic Volunteer Service Act, work requirements in welfare programs, confidentiality in Government statistics programs, equal employment opportunity programs, the trade adjustment program, and the Employees' Retirement Income Security Act, especially as it relates to Title IV (Pension plan termination insurance).
- Analyzed and developed recommendations for budget and program policy for education programs with estimated outlays of $18.7 billion in 1986. Also analyzed and developed recommendations for budget and program policy for eight other education and cultural program agencies.
- Developed policies and legislative proposals for a reorganization, rationalization and cost reduction of federal student aid and other higher education activities.
- Conducted a thorough policy review of Veterans Administration's health care system, which included hospital and nursing home capacity, service delivery, support structures, and eligibility and financing alternatives.

EXPECTED EMPHASIS FOR 1987

- Complete work on reauthorization and oversee implementation of the student aid and other higher education programs.
- Develop improved methods for analysis of Federal student aid activities and costs.
- Continue the effort to improve the management of education activities, especially debt collection, financial management, personnel and cost estimating.
- Analyze the problem of structural unemployment, especially the impact of the Job Training Partnership Act and of the Employment Service.
- Assess proposals to modify unemployment compensation and employee retirement income security laws.
- Continue the assessment of the effectiveness and efficiency of the various labor standards programs.
- Continue to assess the Veterans Administration's health care system, including hospital capacity, delivery, and support structures.
- Work with the Veterans Administration to make further improvements in the way in which VA analyzes its budget needs, including the development of better output measures, better benefit-cost analyses, and better outlay forecasting.

HUMAN RESOURCES, VETERANS, AND LABOR SPECIAL STUDIES DIVISION

The Special Studies Division undertakes in-depth and cross-cutting analyses of issues and problems related to the Departments of Labor, Education, and Health and Human Services, the Veterans Administration, and numerous small agencies. The Division also helps to implement Presidential decisions and initiatives for agencies concerned with human resources, labor, and veterans programs.

MAJOR WORKLOAD IN 1986

Approximately 25 percent of the Division's time was spent in providing technical and analytical assistance to the budget and other OMB divisions, including assistance in costing budget and legislative proposals; use of program and population data bases in analysis; and legislative, regulation and forms clearance. The remainder was devoted largely to major efforts in the following areas:

- *Special Populations.* Continued analyses to improve the knowledge base for policy making and for measuring the impact of Federal programs and policies on poor women, children, and the elderly. Initiated studies of these populations using newly available data from the Survey of Income and Program Participation.
- *Long-term Care.* Initiated analyses of financing and service arrangements for long-term care for the aged and non-aged in institutions and in the community.
- *Health Care.* Continued multiple analyses related to health care.
- *Cash and In-Kind Benefit Programs.* Continued activities to analyze the interrelationships and impact of cash and in-kind benefit programs. Developed models of state - specific welfare benefit packages for working and non-working families.
- *Resource Consumption.* Continued efforts to analyze the consumption of resources in major Federal benefit programs and to assess the contribution of these programs to individual and family well-being.
- *Quality Control.* Continued providing technical assistance to the Department of Labor on implementation of a quality control system in the Unemployment Insurance Program.

EXPECTED EMPHASIS FOR 1987

Efforts in areas listed above will be continued, as follows:

- Multiple benefit recipiency efforts will include additional analysis of data from the Survey of Income and Program Participation for program and policy development purposes.
- Efforts to analyze the consumption of resources in major Federal benefit programs and to assess the contribution of these programs to individual and family well-being will continue.
- Analyses of long-term care program and financing will continue.
- Work on special populations will focus on improving understanding of the implication of demographic changes on program needs for children, youth, women and the elderly.
- Analyses of health-care reform options will continue.

ECONOMICS AND GOVERNMENT PROGRAM DIVISIONS

ASSOCIATE DIRECTOR

The Associate Director for Economics and Government provides executive direction and coordination for the following three program divisions: Transportation, Commerce, and Justice Division; Housing, Treasury, and Personnel Division; and the Economics and Government Special Studies Division.

TRANSPORTATION, COMMERCE, AND JUSTICE DIVISION

The Transportation, Commerce, and Justice Division reviews the budget and program plans of three cabinet departments and 20 other agencies and establishments. These agencies in 1986 employ the equivalent of more than 242,000 fulltime workers and expend about $36 billion (budget authority). Most of the Division's budget authority and outlay programs are relatively controllable. This contrasts with relative uncontrollability for budget outlays as a whole and means that the division has a large number of issues on which policy, legislative, and program decisions must be made.

The Division's work encompasses a wide range of programs: basic governmental services, user-financed capital and operating programs, business and urban assistance, R&D, and regulatory functions. The issues which the Division addresses include legislative matters affecting general Federal law enforcement; border control; communication; antitrust, procurement, real property disposal and building management activities; community and economic revitalization; international trade promotion; statistical data collection and analysis; scientific observations, mapping, and research; business activity promotion and deregulation; transportation regulation; operating and capital assistance for aviation, highway, mass transit, maritime, and rail activities.

MAJOR WORKLOAD IN 1986

The Division's workload is concentrated on issues in the areas of transportation assistance and regulatory reform, commercialization of Federal activities, domestic and international commerce, and basic Government information collection and services. Within the Justice Department, proposed changes in the Immigration and Naturalization Service will require extra effort and attention as will the implementation of the new crime bill. Furthermore implementation of the criminal justice assistance program will need to be monitored.Within the Department of Justice continuing efficiencies in better management of workload will be sought in law enforcement activities. Work includes:

- Operations reviews of several personnel-intensive functions of the Federal Government— the Federal Aviation Administration, the Coast Guard, the National Oceanic and Atmospheric Administration, The Federal Bureau of Investigations, Immigration and Naturalization Service, Bureau of Prisons, and the Panama Canal Commission; user charge proposals continue to be a special focus of Division attention.
- Continuing efforts to achieve debt collection targets, examining loan portfolios to achieve lower default rates, and otherwise implementing budget policy to restrain and target Federal credit assistance.
- In conjunction with other Federal agencies, particularly DOT, developing new legislative proposals to reauthorize the highway and transit programs, and monitoring and analyzing congressional proposals.
- For railroads and the merchant marine, developing proposals to limit, reduce, or terminate Federal subsidies.

— Reviewing authorization proposals to revise trade policy.

— Monitoring the status of the user-financed Highway Trust Fund and its long-term financial viability.

— Reviewing DOT's efforts to sell Conrail, the government-owned freight railroad.

— Monitoring transportation safety programs to ensure efficient use of Federal dollars.

— Analyzing air traffic control modernization proposals to ensure efficient use of Federal dollars.

— Reviewing and making suggestions on the appropriate Federal role vis-a-vis states, localities and individuals in law enforcement.

— Monitoring proposals for funds appropriated to the Navy for Coast Guard programs.

— Seeking greater efficiencies in general Government functions and processes, including but not limited to better service at border checkpoints, better control over entry of undocumented individuals, and greater emphasis on Federal law enforcement.

— Reviewing and making recommendations on major law enforcement initiatives such as the recently passed crime bill and the need for additional prison capacity.

— Reviewing pending prospectuses for construction of new Federal buildings, major repair and alteration proposals, and new leases for office space.

— Monitoring developments in immigration reform legislation.

— Participating in formulation and coordination of Federal drug law enforcement policies, programs and budgets.

— Monitoring the proposals to eliminate several Federal programs, including arranging for the transfer of residual functions and orderly phase out of operations. Assistance to AMTRAK, EDA, ARC, U.S. Travel and Tourism Administration, and air carrier subsidies are included.

— Analyzing and monitoring congressional proposals regarding transportation deregulation in trucking and railroad transport and sunsetting of the ICC.

— Continuing review of various programs of credit and grant assistance to businesses—as well as programs intended to promote economic and community development—including those presently in SBA and Commerce.

— Monitoring commercialization of the land remote sensing satellite system (LANDSAT) to assure that any necessary subsidies are kept to a minimum and that the Federal commitment is time limited.

— Analyzing National Weather Service restructuring proposals to assure the most cost-effective approach.

— Reviewing the administrative systems and personnel in three cabinet departments and 20 other agencies.

— Reviewing the collection of current and periodic census surveys for possible cost reductions.

— Monitoring impact of Gramm-Rudman-Hollings on agencies.

EXPECTED EMPHASIS FOR 1987

Workload for the Division in 1987 is expected to exceed that for 1986. Proposals already made for programmatic change will require monitoring as they are considered in the Congress and implemented. Sustained activity to bring greater control to the Federal budget will require new analysis. Because a large proportion of the outlays overseen by the Division is controllable, the workload is expected to be especially heavy. Examples of major new work efforts include: .

- Monitoring and evaluating the Administration's user fee and privatization proposals as they are acted upon by the Congress.
- Assessing and formulating policy alternatives for the conduct of the 1990 Decennial Census.
- Reviewing the implementation of management reform activities.
- Helping define issues pertinent to the multi-year Surface Transportation Reauthorization Act as it affects highway and transit programs.
- Evaluating savings to be achieved through recent substantial capital investments in the air traffic control system.
- Facilitating availability and monitoring use of funds appropriated to the Navy for Coast Guard programs.
- Evaluating savings to be achieved through contracting out a wide variety of Federal services—e.g., air traffic control maintenance and similar activities.
- Continuing to review the automation of patent and trademark applications.
- Reviewing implementation of new law enforcement initiatives, especially those concerning export control and drug trafficking.
- Assessing telecommunications policy and legislative proposals.
- Participating in formulation and coordination of Federal drug policies, programs and budgets.
- Evaluating GSA's Federal Building Fund.
- Monitoring and assisting GSA in implementing a greatly expanded surplus property disposal program.
- Monitoring GSA's FTS 2000 telecommunications proposal.

HOUSING, TREASURY AND PERSONNEL DIVISION

The Housing, Treasury and Personnel Division reviews the budget and program plans of two cabinet departments, two major small agencies (OPM and FEMA) and 26 other agencies and establishments. These agencies in 1986 employ the equivalent of more than 159,000 fulltime workers and expend about $75 billion (budget authority). Much of the Division's budget authority and outlay programs are relatively controllable. This contrasts with relative uncontrollability for budget outlays as a whole and means that the division has a large number of issues on which policy, legislative, and program decisions must be made.

The Division's work encompasses a wide range of programs: basic governmental services, user-financed programs, development and urban assistance, tax expenditures, and regulatory functions. The issues which the Division addresses include housing and mortgage credit policy: regulation and examinations of the thrift banking and other financial industries; community and economic revitalization; housing assistance:tax administration, federal personnel and compensation policies, federal emergency and disaster relief policies.

MAJOR WORKLOAD IN 1986

The Division's workload is concentrated on issues in the areas of restructuring federal personnel compensation and benefits, other personnel policies, economic and community development, basic Government financial and debt management services, financial institution reform and Federally assisted housing and credit programs. Work includes:

— Continued efforts to achieve debt collection targets, examine loan portfolios to achieve lower default rates, and otherwise implement budget policy to restrain and target Federal credit assistance.

— Providing staff analyses to support the Administration's efforts to reform the secondary mortgage market and encourage grater private sector participation in that market.

— Determine applicability of Gramm-Rudman-Hollings Act sequester to Division Agencies, especially independent regulatory agencies and previously "off-budget entities, such as the Postal Service, and implement the required 1986 sequester.

— Monitoring the proposals to eliminate several Federal programs including arranging for the transfer of residual functions and orderly phase out of operations for UDAG and Ho Dag rehabilitation loans, housing counciling, the Postal revenue foregone subsidy and GRS included.

— Analysis of transportation deregulation in trucking and railroad transport.

— Providing staff analysis of proposals to reform Federal financial support for public housing in light of changes brought about by the Deficit Reduction Act.

— Analysis of alternatives for Federal support for public housing operating costs and renovation requirements.

— Review of FHA activities to establish more efficient approaches and ensure FHA insurance does not compete with or preclude private market mortgage activities.

— Monitor and review changes in thrift and banking industries in the new deregulatory enviroment, follow up on the Vice President's Task Force study on regulatory reform of the structure of the Federal financial institutions, and participate in the Administration's review of the adequacy of premiums charged to the depository institutions.

- Analysis of alternatives to reform current housing and community development support for Indians.
- Continuing review of various programs of credit and grant assistance to state and localities intended to promote economic and community development, as well as the proposed urban enterprise zones program.
- Review of the administrative systems and personnel in three cabinet departments and 20 other agencies.
- Analyze and help implement statutory and administrative changes in Federal personnel policy.
- Review and make recommendations on Administrative implications of tax reform proposals.
- Assist in implementing the Administration's program to improve civil defense and other emergency-response systems.
- Provide liaison with Emergency Mobilization Planning Board to implement plans to improve mobilization plans.

EXPECTED EMPHASIS FOR 1987

Workload for the Division in 1987 is expected to exceed that for 1986. Proposals already made for programmatic change will require monitoring as they are considered in the Congress and implemented. Sustained activity to bring greater control to the Federal budget will require new analysis. Because the greater proportion of the Division's outlays is controllable, the workload is expected to be especially heavy. Examples of major new work efforts include: .

- Monitor and evaluate the Administration's user fee and commercialization proposals as they are acted upon by the Congress.
- Assess and formulate policy alternatives for the conduct of the 1990 Decennial Census.
- Study and make recommendations on additional efforts to privatize the secondary mortgage market and the involved Federal entities: FNMA, GNMA and the FHLMC.
- Assist HUD and Treasury in implementing the changes to public housing financing procedures which are likely to be adopted by Congress in 1986.
- Continued review of the adequacy of the insurance funds maintained by the depository institution regulators (FDIC, FHLBB and NCUA).
- Continued analysis of regulatory reforms for financial institutions and the financial services industry-those that have been adopted and those under consideration.
- Evaluate effectiveness of Rental Rehabilitation and Rental Constuction Grant programs enacted in the 1983 Housing/IMF Bill.
- Review the implementation of management reform activities.
- Analyze further proposals for cutting costs and improving management of the 4.1 million unit HUD subsidized housing inventory.
- Review operations of IRS service centers and effective use of additional 1986 resources to assure a smooth 1986 filing season.
- Develop with SSD/EG an alternative for increasing tax compliance through penalties of other market oriented incentives, as an alternative to more costly enforcement staff increases.
- Complete joint study with HUD on alternatives for selling the FHA mortgage insurance business to the private sector.

- Monitor effects of removing Treasury subsidy for purchases of Treasury market securities and complete, with Treasury study of effect of same policy on savings bond program.
- Analyze with Postal Service alternatives for changing relationship between Postal Service and Federal government.
- Continue to evaluate and implement retirement reform proposals for pre and post 1984 civil service employees.
- Evaluate and help OPM implement 1987 budget reforms for the FEHA program.
- Analyze effectiveness of FFB fee proposal in restraining growth and unintended use of subsidized Federal credit programs.

ECONOMICS AND GOVERNMENT SPECIAL STUDIES DIVISION

Alone, and in cooperation with the budget divisions, this division undertakes indepth analyses of policy, budget, and management issues of major Federal programs, concentrating on the Departments of Commerce, Treasury, Justice, Transportation, and Housing and Urban Development, Office of Personnel Management, General Services Administration, Small Business Administration, and the financial regulatory agencies, Office of Personnel Management, General Services Administration, Small Business Administration, and the Financial Regulatory agencies to provide a better analytical basis for decisions on the Administration's budget and legislative program. In addition, the Division coordinates within OMB, the Executive Office of the President, and interagency review groups the analysis, policy development, and implementation of multi-agency or governmentwide issues.

MAJOR WORKLOAD IN 1986

- Preparation of the needs assessment portion of the "Infrastructure Report" supplement to Special Analysis D of the President's budget.
- Analyses of proposed infrastructure financing mechanisms.
- Development and refinement of a thrift industry data base and use of that data base to perform financial analyses of the industry, estimates of Federal liabilities incurred through the deposit insurance system, and policy analyses of proposals to reform the deposit insurance system.
- Coordination of OMB intellectual property activities including analyses of proposals and legislation.
- Analyses of major Federal telecommunications procurement proposals and issues.
- Analyses of proposals involving high technology sectors of the economy, particularly as they involve antitrust and industrial policy or trade issues.
- Development and refinement of models capable of structuring and evaluating alternative Federal personnel policies in the pay and retirement area.
- Refinement of proposals to improve tax administration by charging appropriate interest rates for under payments or delayed payments.
- Development of models to determine optional levels of IRS tax enforcement.
- Analyses of Administration urban policies, including UDAG and enterprise zone proposals.
- Development and analyses of proposals for Federal program and tax turnbacks to the states.
- Construction of a data base on state and local financial variables to develop alternate measures of state and local fiscal conditions.
- Analyses of the effectiveness of selected Federal credit programs.
- Development of a workable data base from the Annual Housing Survey to help estimate actual needs for subsidized housing.

EXPECTED EMPHASIS FOR 1987

- Preparation of the needs assessment portion of the "Infrastructure Report" supplement to Special Analysis D of the President's budget.
- Continued analysis of civil service pay issues.

- Continued development of analytical tools designed to improve allocation of personnel resources.
- Continued analysis of intellectual property, high technology, industry policy, antitrust, and trade issues.
- Continued analysis of proposals for financing infrastructure investment.
- Application of the Annual Housing Survey data base to determine actual needs for subsidized housing.
- Continued analyses of Federal telecommunications procurement and policy issues.
- Continued evaluations of changes in State and local fiscal conditions within a fiscal federalism framework, based on the data base of State and local fiscal variables constructed in 1986.
- Analyses of role of user fees in reducing need for federal infrastructure aid (e.g., highways, water and sewer grants) and improving local utilization and maintenance of existing facilities.
- Continued analysis of Federal credit programs, including the credit function of government sponsored enterprises such as FNMA and the Farm Credit System.
- Continued analysis of Federal policies towards the thrift industry and reforms of the deposit insurance system.
- Expansion of models developed to determine optional levels of IRS tax enforcement to address other government enforcement activities.
- Analysis of the ability of the Federal Building Fund to meet Federal space needs.

NATURAL RESOURCES, ENERGY, AND SCIENCE PROGRAM DIVISIONS

ASSOCIATE DIRECTOR

The Associate Director for Natural Resources, Energy, and Science provides executive direction and coordination for the following three program divisions: Natural Resources Division; Energy and Science Division; and the Natural Resources, Energy, and Science Special Studies Division.

NATURAL RESOURCES DIVISION

This staff has responsibility for examining and making recommendations on the budget submissions and program levels of 15 agencies with gross budget and lending authority of $48 billion and staffing levels of over 223,000 positions. This Division examines budget requests, programs, operating methods, and legislative proposals of the agencies and programs assigned to them. The Division reviews Federal public works projects in the water resources area prior to their transmittal to Congress for authorization and also analyze special problems affecting natural resources and the environment. The Division handles over 750 reports, draft bills, testimony and floor statements on legislation per year, reviews over 700 draft and proposed regulations per year and reviews over 300 program or project analyses per year.

MAJOR WORKLOAD IN 1986

- Respond to demands from all sources for budgetary data and quick analyses of alternatives throughout the preparation and enactment of the budget.
- Continuous review and evaluation environmental programs, including pollution control and abatement, the grant program for municipal sewage treatment facilities, and the control and clean up of hazardous waste dump sites. Legislative proposals and regulations in all major environmental programs continue to place heavy workload demands on this Division.
- Develope and apply computer models of major agricultural economic factors and provide analytical results as inputs to decisions on the 1985 and 1986 farm programs, and the new farm bill.
- Continue to review and evaluate the farm price support program. Participate in the development of the Administration's position on the 1985 farm bill.
- Continue to review and evaluate the agricultural credit programs and the Farmers Home Administration, including staffwork on the farm credit bill and on ways to deal with lagging credit worthiness of farm operations.
- Update the supply/demand analysis of rural housing including private mortgage organizations as well as government programs for low and very low income rural families.
- Complete the review and evaluation of brucellosis eradication program with objective of achieving an effective eradication/control program.
- Continue to review and evaluate the of agricultural research programs with the objective of achieving more basic and less applied research including evaluation and closing of low priority Federal research facilities.
- Complete the analysis of Rural Electric and Telephone revolving fund portfolio.
- Conduct a comprehensive analysis and develope the Administration positions on the Corps of Engineers omnibus water project authorization bill including staff work on major administration initiatives on cost sharing and user fees.

- Under Executive Order 12322, the Division conducts policy and technical reviews of reports on projects proposed by the Corps of Engineers, the Bureau of Reclamation, and the Soil Conservation Service (SCS) before they are transmitted to the Congress.
- Review proposed water resource project cost sharing agreements between non-Federal sponsors and the corps of Engineers of the Bureau of Reclamation.
- Coordinate water data activities required under OMB Circular A-67. [The Division provides support for the activities of the Assistant Secretaries Working Group on water resources.]
- Provide staff work on energy and minerals, public lands issues, especially for oil, gas, and coal development which may result in significant Federal and State revenues. This year's work will included review of regulations concerning energy mineral leasing and land management, mined land reclamation, proposals for wild and scenic rivers, and wilderness designations.
- Continue the review and evaluation of Forest Service program management with the objective of achieving increased productivity and reduced Federal costs.
- Division will devote major review and evaluation time to Forest Service Resources Planning Act multi-year program development for submission to the Congress.
- Proposals for improvements in National Park and Fish and Wildlife Systems land acquisition, sale or exchange of public lands, recreation user fees, and improving the efficiency of Fish and Wildlife Service operations place significant analytical demands on the Division.
- Review numerous legislative transactions involving the public lands.
- Continuous analysis of Indian programs such as education and housing, welfare, reservation resources and economic development, water rights, and improved internal operations of the Bureau of Indian Affairs. Financial assistance to U.S. Territories and the Trust Territory of the Pacific, including the Compact of Free Association proposals, receive staff attention. Regulations on welfare and education programs required major attention.
- The Division is working with departments and agencies on Reform 88 projects, such as more efficient use of personnel, debt collection, and internal financial control, and administrative systems upgrading as well as review and information of recommendations from the President's Private Sector Survey on Cost Control.
- Continuous review of Federal agricultural export programs; including the development of alternative export credit, subsidy and CCC stock disposal concepts.
- Continue the review of Federal domestic agricultural commodity donations programs, including analysis of various legislative and Departmental proposals.
- Staff work is done in public land sales and exchange issues in conjunction with the Departments of Interior and Agriculture.
- The Division is conducting an interagency review of agricultural statistical needs and data collection efforts.
- Continue review of the public land grazing fee evaluation and negotiating documentation required for submission to Congress in 1985.
- Staff will devote considerable time to the review of historic preservation regulations and program.

EXPECTED EMPHASIS IN 1987

The primary emphasis in FY 1987 will be determined largely by the need to follow through on the Administration's new initiatives and Congressional action on them. Major analyses and staff support work in budget matters across the board, as well as work in cost-reducing legislation, is expected.

The Division will also concentrate efforts in analyzing and implementing a number of pieces of legislation, including:

- — Corps of Engineers Omnibus Water Project Authorization Bill, still in the legislative process, including port harbor and inland waterway commercial navigation modernization and user fee issues.
- — Reclamation project authorizations and program improvements.
- — Clean Water Act; Clean Air Act; Toxic Substance Control Act.
- — Proposals for Recreation User Fees.
- — Wetlands Preservation.
- — Proposals for agricultural export assistance, commodity donations, and subsidies to rural electric and telephone systems.
- — Implementation of the compact of Free Association Legislation relating to the Trust Territories of the Pacific.
- — The 1985 Farm Bill.
- — Proposals to share receipts for various programs on a net rather than gross basis.

ENERGY AND SCIENCE DIVISION

This Division reviews, analyzes, evaluates and makes recommendations on Federal government policies, programs, legislative proposals, budget requests and agency management initiatives in energy, science, space, and related areas of government activity. It helps develop, integrate and coordinate Federal energy, science and space policies, programs and budgets across agencies.

The major agencies the Division has direct responsibility for include the Department of Energy, NASA, and the National Science Foundation.

The Division works continually to identify appropriate measures and provide analytic support for Administration efforts to reduce deficit spending. The Division also monitors the progress of agency and Congressional actions on Administration legislative and budget proposals. It also monitors closely agency implementation of Congressionally approved programs.

To carry out these responsibilities, the Division hires, trains and supports the staff necessary to:

- Develop and maintain knowledge of all aspects of the missions, policies and programs of assigned agencies, the related programs of other agencies, and the related activities of the states and private sector.
- Ensure timely identification of agency and interagency issues and provide critical analysis of options for their resolution, including policy, program and budget implications.
- Help achieve timely, effective implementation of Administration policy and program plans through budget, legislative and regulatory processes.

MAJOR WORKLOAD IN 1986

The Division's workload in 1986 includes the following:

- Assist in assuring effective coordination of the DOE nuclear weapons program with the needs and requirements of the Department of Defense.
- Monitor the shut-down of the U.S. Synthetic Fuels Corporation and the transfer of previous financial assistance agreements to the Treasury Department.
- Monitor and assess the effects of tax reform on energy industries and the possible relationships between energy tax, spending and regulatory policies.
- Continue monitoring sales of surplus electricity from the Bonneville Power Administration system in the Pacific Northwest to California and other states in the Southwest, ensuring that any necessary additional transmission capacity is financed by non-Federal sources to the maximum extent possible.
- Continue oversight of the operational readiness, physical security and financial integrity of the Strategic Petroleum Reserve and help coordinate OMB participation in interagency energy emergency preparedness studies and policy development activities, including reports and recommendations of the International Energy Agency.
- Monitor and asses DOE implementation of the Clean Coal Technology Program.
- Monitor and assess DOE implementation of Administration proposals for financing of the Uranium Enrichment Program and transfer of R&D responsibilities to the private sector.
- Encourage and monitor DOE progress in planning for implementation of Administration privatization proposals, including privatization or defederalization of the five Federal power marketing administrations (PMA's) and the sale of the Naval Petroleum Reserves (NPR's).

- Encourage and monitor DOE planning for cooperative R&D ventures proposed in the 1987 budget, and continue to track and analyze trends in private sector R&D and energy supply and demand to assure an appropriately limited Federal role in these area of the national economy.
- Monitor impacts of the partial deregulation of natural gas pricing under the provisions of the Natural Gas Policy Act of 1978, and assist in development of further legislative amendments as appropriate.
- Help resolve through administrative or legislative means the appropriate disposition of petroleum overcharge funds when the injured parties cannot be identified and restitution made directly.
- Monitor progress in collaborating with the U.S.S.R. on fusion energy, as proposed by the President in Geneva.
- Monitor studies of the space shuttle accident and recommendations by NASA and the President's commission and identify and assess key program policy and budget implications.
- Monitor and assess ongoing Executive Office of the President follow-up reviews of the Administration's aeronautical R&D policy.
- Closely monitor expected reviews by the Economic Policy Council of the President's space commercialization program.
- Promote and monitor agency progress toward the Administration's management improvement initiatives, including "Reform 88," the President's Private Sector Survey on Cost Control, and agency management improvement plans.

EXPECTED EMPHASIS IN 1987

Major responsibilities which the Division expects to devote staff resources to in 1987 include the following:

- Closely monitor DOE implementation of Administration privatization initiatives, as approved by the Congress.
- Endure effective implementation of Administration budget reductions and policy initiatives, other than privatization, as authorized by the Congress, particularly in DOE energy R&D.
- Continue to identify areas of Federal activity where market forces or state and local governments might achieve national goals more appropriately, effectively and efficiently; and help ensure that the remaining Federal role is appropriately limited.
- Monitor implementation of a plan for repayment of unrecovered government investment in the uranium enrichment program.
- Pending privatization of the power marketing administrations (PMA's), continue closely monitoring their financial performance, including repayment of the unrecovered federal investment, and seek full cost recovery on a timely basis through new legislative or administrative initiatives.
- Continue to track progress of major new nuclear accelerator to be constructed at Newport News, Virginia.
- Continue to monitor design studies underway for a new accelerator, called a superconducting supercollider (SSC), being proposed to the Administration by the high energy physics community.
- Continue to monitor Nuclear-Waste Fund finances to ensure appropriate balance between private and government payments to the Fund.

- Increase oversight of Tennessee Valley Authority (TVA) programs with special emphasis on its financial performance and debt financing and TVA's efforts to improve its nuclear power operations.
- Help ensure safety and efficiency in Government production-oriented operations, such as the Space Transportation System of NASA and the DOE uranium enrichment and weapons production activities.
- Continue to work toward assuring balance in overall federal support for basic research, particularly through programs of the National Science Foundation.
- Continue to track and oversee agency implementation of management reform initiatives, including recommendations of the President's Private Sector Survey on Cost Control and agency management improvement plans.

In these monitoring efforts, the Division will continue to anticipate and identify key problems and issues arising in the Congressional legislative and appropriations processes and in agency implementation actions. In so doing, the Division will also provide options for the resolution of issues in a timely and appropriate manner by key officials of OMB and the Administration.

NATURAL RESOURCES, ENERGY AND SCIENCE SPECIAL STUDIES DIVISION

This Division analyzes policy and program issues in the natural resources, energy and science functions to provide the necessary analytic framework and detailed information for the development of new or revised policies and funding levels as appropriate. The division either directs or participates in interagency task forces which conduct such analyses.

MAJOR WORKLOAD IN 1986

The Special Studies Division develops study plans, completes parts or all of the analyses, expedites scheduling/completion of work, assures quality and objectivity in methodology and work products. Final products typically are decision papers with options for a given policy or program issue.

- *International Energy*. Monitor U.S. actions with International Energy Agency (IEA) and other countries; complete analyses and develop options for various issues that arise as a result of IEA meetings, summits, etc.
- *Natural Gas*. Work with affected agencies on Administration proposals.
- *Strategic Petroleum Reserve*. Complete an evaluation of crude quality requirements.
- *Alaskan oil development*. Evaluate impacts of alternative distribution policies.
- *World Oil Price Impacts*. Complete analyses of prospects for changes in oil prices and impacts on policies, programs and the budget.
- *Strategic Materials/Minerals Policies*. Work with various agencies to evaluate strategic materials/minerals related policies and programs and alternatives.
- *Petroleum Supply Interruption Planning*. Work with energy agencies in evaluating threats and developing appropriate contingency policies/plan.

EXPECTED EMPHASIS FOR 1987

Anticipated projects relate to the following:

- *Petroleum Supply Disruptions*. Work with energy and security agencies to ensure appropriate contingency plans.
- *International Energy*. Monitor developments, and evaluate proposals for impacts and effectiveness.
- *Utility Program*. Evaluate selected utility program subsidy levels, effectiveness and impacts.
- *World Oil Price Impacts*. Complete analyses of prospects for changes in oil prices and impacts on policies, programs and the budget.
- *Strategic Materials/Minerals Policies/Programs*. Work with affected agencies to coordinate and evaluate policies/programs and alternatives.
- *Natural Gas*. Work with affected agencies on analysis of natural gas related issues.
- Provide analytic support to NRES policy/budget issues as they arise in various working groups and interagency efforts.
- *Impact of Commodity Donations*. Work with the affected agencies to estimate the market displacement impacts of donations.

entire office not authorized.

OFFICE OF INFORMATION AND REGULATORY AFFAIRS

The Office of Information and Regulatory Affairs (OIRA) was established in January 1981 as required under section 3503 of the Paperwork Reduction Act of 1980 (P.L. 96-511). Under this Act, the Office is responsible for reviewing, approving, and disapproving the collection of information, establishing the policies, principles, and guidelines that govern the acquisition and management of Federal information resources and coordinating and giving policy direction to Federal statistical activities. In addition, the office has responsibilities under the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b), the Brooks Act (40 U.S.C. 759), the Privacy Act of 1974 (5 U.S.C. 552a), the Regulatory Flexibility Act of 1980 (5 US.C. 601 et seq.), Reorganization Plan No 2 of 1970 (84 Stat. 2085), Reorganization Plan No. 1 of 1977 (91 Stat. 1633), Executive Order No. 10033 (February 8, 1949), Executive Order No. 10253 (June 11, 1951), Executive Order No. 12046 (March 17, 1978), Executive Order No. 12291 (February 17, 1981), Executive Order No. 12318 (August 21, 1981), and Executive Order No. 12498 (January 4, 1985).

INFORMATION POLICY

This branch is responsible for helping agencies achieve government-wide greater economy and efficiency of operations through the prudent application of information technology as required by the Brooks Act (P.L. 89–306) and for developing policies governing Federal telecommunications systems pursuant to E.O. No. 12046. It oversees the acquisition, maintenance, use, and distribution of information resources throughout the Federal government and oversees and provides guidance to agencies in the implementation of the Privacy Act of 1974. Under the Paperwork Reduction Act of 1980, this unit's functions were expanded to include policy direction and oversight of information dissemination, records management functions and integration of information policy functions.

REPORTS MANAGEMENT

The primary function of this branch is to ensure achievement of the following goals of the Paperwork Reduction Act: to minimize public burden, eliminate unnecessary duplication, and minimize cost to the Federal government associated with collecting information from the public. This branch formulates government-wide policies on the collection of information from the public, oversees the application of these policies by government agencies, and prepares periodic reports to the President and Congress on paperwork reduction accomplishments. In addition, this branch ensures that paperwork policies are coordinated with implementation of Executive Order No. 12291, the Regulatory Flexibility Act, and such other activities required by the Paperwork Reduction Act as the operation of the Federal Information Locator System. The branch also operates the management information systems docket files that control and track transactions under the Paperwork Reduction Act and Executive Order No. 12291.

REGULATORY POLICY : This branch is not authorized.

The primary responsibility of this branch is to ensure that Executive Order No. 12291 (Federal Regulation) and Executive Order No. 12498 (Regulatory Planning Process) are effectively implemented. The branch oversees and develops government-wide procedures and policies pertaining to regulatory policies and programs, including the review of new regulations and the preparation of the government's annual regulatory program and semi-annual regulatory agenda. In addition, the branch ensures that regulatory policies are coordinated with implementation of the Paperwork Reduction Act, the Regulatory Flexibility Act, and other regulatory activities of the government. The branch prepares periodic reports on implementation of the government's regulatory programs.

REGULATORY ANALYSIS

This branch conducts in-depth reviews of selected regulations, especially where concerns for cost and economic efficiency are important. It assists agencies in the regulatory impact analyses they conduct under Executive Order No. 12291, for example, by developing methodological guidance for measuring benefits and costs, and by suggesting alternatives that may achieve regulatory objectives in more cost-effective ways. This branch also supports the Executive Order No. 12498 process by helping to ensure the government-wide implications of regulations are addressed in the regulatory program. This branch does research on a variety of regulatory issues and regulatory reform initiatives, and analyzes legislative proposals that have major regulatory components.

STATISTICAL POLICY

This branch provides oversight, coordination, and policy direction of Federal statistical activities. It is responsible for the statistical policy and coordination functions in section 3504 of the Paperwork Reduction Act of 1980 and for implementing section 103 of the Budget and Accounting Procedure Act and Executive Order No. 10253 concerning government-wide statistical policy and standards. It is also responsible under Executive Order No. 10033 for providing U.S. statistical data to international organizations. It establishes government-wide policies, standards, and guidelines for data collection, classification, publication, and dissemination, develops long-range plans for the improvement of Federal statistical programs, and evaluates program performance and agency compliance with policies and standards.

MAJOR WORKLOAD IN 1986

- Prepare the government-wide annual Information Collection Budget.
- Make modifications to and continue operation of the Federal Information Locator System (FILS) as mandated by the Paperwork Reduction Act.
- Oversee and improve the Federal planning process to be used in the management of computer and telecommunications resources.
- Publish fourth five-year plan for acquisition and management of information technology resources.
- Initiate and conduct reviews of eight major mission critical information systems to ensure that the information resources are being efficiently and effectively managed.
- Issue a comprehensive information policy to provide guidance to Federal agencies on the management and use of information resources, including information technology planning, acquisition and use; microcomputers; telecommunications; computer security; access and dissemination of information, etc.
- Complete the 1987 revision of the Standard Industrial Classification.
- Issue new statistical policy guidance to Federal agencies, setting standards for the design of statistical surveys, the publication and documentation of data, and the treatment of respondents.
- Establish a process for evaluating all principal Federal economic indicators on a 3-year cycle, as called for in the 1985 revision of Statistical Policy Directive No. 3.
- Review the pretesting of content and methods for the 1990 Census of Population and Housing.
- Continue to chair the Federal Agency Council for the 1990 Census, to identify and coordinate Federal requirements for census data.
- Develop guidelines to help Federal agencies deal with statistical issues in health risk assessments.

- Prepare *Special Report on the Statistical Activities of the United States Government, Fiscal Year 1987.*
- Continue, through chairmanship of the Federal Committee on Statistical Methodology, to promote development and government-wide transfer of advanced statistical methods.
- Complete evaluation, begun in 1985, of Federal agencies' business survey methods and practices and their impact on the quality of economic data.
- Issue a guidebook to help Federal agencies plan efficient and effective programs to disseminate statistical data electronically.
- Review approximately 5,000 agency requests for action under the Paperwork Reduction Act.
- Implement a government-wide planning process for conducting reviews of Federal information activities.
- Seek adoption of the Administrations Legislative proposal to remove impediments to paperwork reduction and regulatory relief.
- Review about 250 legislative proposals with regulatory implications.
- Prepare the Administration's Regulatory Program for 1986 as required by Executive Order No. 12498.
- Review about 2,500 regulations under E.O. No. 12291, 70 of which are major rules (and their associated regulatory impact analyses) evaluated in depth.
- Revise the OMB guidelines on administration of the Privacy Act of 1974.
- Publish the fifth annual report to Congress on implementation of the Paperwork Reduction Act.
- Evaluate 130 reports on new or altered systems of records for conformance with the provisions of the Privacy Act of 1974 and determine the effect of those systems on the privacy and other personal property rights of individuals.
- Prepare the Annual Report of the President on administration of the Privacy Act of 1974.
- Issue policies for improving the management of Federal software resources and reducing the costs of such activities through greater reliance on the acquisition of commercially available software packages.
- Issue policies and procedures to improve the internal management control programs by linking the security and integrity of automated information systems to internal control review activities.
- Develop legislative proposals to harmonize the access and exemption provisions of the Privacy and Freedom of Information Acts.
- Work with Congress to seek adoption of the Administration's legislative proposal to repeal or modify over 200 statutorily mandated reports to Congress.
- Together with the Regulatory Information Service Center, issue the Unified Agenda of Federal Regulations in October and April.

EXPECTED EMPHASIS FOR 1987

Major efforts planned in FY 1987 include:

- Review of approximately 6,200 information collection transactions under the Paperwork Reduction Act
- Prepare and publish the government-wide Information Collection Budget.
- Continue management of the Federal Information Locator System.
- Develop a policy for improving the efficiency of data access and user services.
- Publish fifth five-year plan for acquisition and management of information technology resources.
- Initiate and conduct reviews of an additional five to ten major mission critical information systems to ensure that the information resources are being efficiently and effectively managed.
- Develop and issue guidance on specific information resources management issues such as records management and information dissemination.
- Jointly conduct reviews of the information activities of major agencies with the General Services Administration.
- Review about 250 legislative proposals with regulatory or information policy implications.
- Review about 2,600 regulations, 70 major rules (40 with corresponding regulatory impact analyses) for consistency with Executive Order No. 12291 on Federal Regulation.
- Prepare the Administration's Regulatory Program for 1987 as required by Executive Order No. 12498.
- Together with the Regulatory Information Service Center, issue the Unified Agenda of Federal Regulations in October and April.
- Review performance evaluations of 20 principal Federal economic indicators.
- Solicit and review public comment on the criteria for redefining Metropolitan Statistical Areas following the 1990 Census.
- With the interested Federal agencies, begin evaluation of the coverage, content, and quality of the major household surveys sponsored by the Federal government.
- Develop a policy on cost recovery for products and services of Federal statistical agencies.
- Prepare *Special Report on the Statistical Activities of the United States Government, Fiscal Year 1988*.
- Publish the sixth annual report to Congress on implementation of the Paperwork Reduction Act.
- Evaluate 130 reports on new or altered systems of records for conformance with the provisions of the Privacy Act of 1974 and to determine the effect of those systems on the privacy and other personal property rights of individuals.
- Prepare the Annual Report of the President on administration of the Privacy Act of 1974.
- Develop and issue guidelines for the acquisition and use of Federal telecommunications resources to ensure that they are being acquired and managed efficiently and effectively.
- Review plans for the 1990 Decennial Census of Population and Housing to ensure maximum automation of census functions within a coordinated systems environment.

MANAGEMENT ACTIVITIES

ASSOCIATE DIRECTOR

The Associate Director for Management provides executive direction and coordination for the Management Improvement Division, Financial Management Division, and the Planning and Communications Management Division.

MANAGEMENT IMPROVEMENT DIVISION

The Division develops and supports Executive Branch initiatives related to management systems, administrative support, staffing, and organizational reform. The Division provides staff support for assigned Reform '88 projects, the Administration's long term effort to improve administrative and management systems. The Division develops and implements cost reduction efforts for administrative operations and develops, analyzes, and coordinates organizational proposals to improve the management of Federal programs. Provides staff support for the President's Council on Integrity and Efficiency (PCIE) and its efforts to reduce fraud, waste and abuse in Federal programs.

MAJOR WORKLOAD IN 1986

- *Government-wide Management Systems.* Coordinated development of improved management systems having government-wide applicability, including payroll/personnel systems.
- *Improved Administrative Operations.* Division staff carried out a number of initiatives to improve agency operations including consolidation of administrative support and payments centers and streamlined field structure.
- *Preparation of President's Budget.* Participated in preparation of President's Budget by identifying and analyzing management issues having significant budgetary impact.
- *Reduction of Operating Costs.* Division staff continued efforts to reduce agencies' operating costs including those related to publications, travel, space, printing plants, and other overhead costs.
- *Payment Integrity.* Division staff carried out initiatives to promote quality control objectives and error reduction techniques in major entitlement programs.
- *Fraud, Waste, and Abuse.* Prepared, conducted, and followed up the President's Council on Integrity and Efficiency meetings; monitored PCIE projects; prepared and issued two semi-annual reports of IG activities; received and referred whistleblower contacts; and developed or reviewed legislative proposals.

EXPECTED EMPHASIS FOR 1987

- Participate in the preparation of President's Budget.
- Continue development and implementation of standardized management systems.
- Continue implementation of management reform projects, the consolidation of administrative support and payments centers, streamlined field structure, and improved headquarters organization and management.
- Continue development and implementation of payment integrity initiatives.
- Identify and develop additional management reforms.
- Ensure implementation of a Government-wide productivity improvement program.
- Continue support for the President's Council on Integrity and Efficiency and the agency Inspectors General.

FINANCIAL MANAGEMENT DIVISION

The Financial Management Division develops and implements initiatives related to OMB's responsibilities for improving financial management practices in the Executive Branch. The Division develops financial management, accounting, and grants management policies; monitors agency financial and grants management practices; and improves audit and audit follow-up systems. It carries out finance related Reform '88 projects, such as credit management, debt collection, cash management, and internal control, and improve the link between the budget, accounting, and other financial systems. The Division participates in the Joint Financial Management Improvement Program.

MAJOR WORKLOAD ACTIVITIES IN 1986

- Implementing the Prompt Payment Act of 1982, developing OMB regulations and monitoring agency practices to insure compliance.
- Implementing the Federal Managers' Financial Integrity Act of 1982 by developing guidelines for internal controls against fraud and abuse and for effective, efficient accounting systems.
- Reviewing and upgrading cash management throughout the Federal Government.
- Updating and improving agency fund controls to prevent overobligation and overspending of Federal funds.
- Implementing audit policy and assuring management follow-up of audit findings.
- Establishing and monitoring government-wide administrative practices and cost reimbursement principles for grants to State and local governments, universities, and nonprofit organizations.
- Assuring agency implementation of the Debt Collection Act of 1982 plans for improving debt collection. Reviewing, analyzing and following-up on quarterly financial reports from those agencies. Preparing an annual report required by Congress on the status of Federal debt collection activities.
- Providing the staff support for block grant implementation and coordinating policy on block grants.
- Supporting efforts of The Office of Information and Regulatory Affairs to achieve major reductions in the regulatory burden placed on State and local governments.

EXPECTED EMPHASIS FOR 1987

- Upgrading agency accounting and internal control systems and preparing reports to the President and Congress on agency internal control systems as required by the Federal Manager's Financial Integrity Act of 1982.
- Developing and monitoring implementation of overall financial management policy.
- Encouraging the development of common financial management systems that can serve the needs of all major agencies.
- Preparing reports to Congress required by the Prompt Payment Act of 1982 and the Debt Collection Act of 1982. Continuing efforts to see that all bills are paid as close as possible, but not later than the due date. Achieving significant new savings through improved cash management and debt collection.
- Assuring full implementation of audit follow-up policy.
- Working with the JFMIP, the GAO, and the Treasury Department to streamline and modernize central payment and collection processing and accounting.

- Implementing the Debt Collection Act of 1982, by developing policy guidelines on managing Federal credit programs to supplement Circular A-70 "Policies and Guidelines for Federal Credit Programs".
- Developing policies, procedures and guidelines to implement P.L. 98-502 "Single Audit Act of 1984".
- Streamlining government-wide administrative requirements for grants to State and local governments and other non-profit organizations.
- Updating and clarifying guidance implementing Chapter 63 "Using Procurement Contracts, Grants and Cooperative Agreements" of P.L. 97-258.

PLANNING AND COMMUNICATIONS MANAGEMENT DIVISION

The Division plans and coordinates the development of management improvement initiatives to be included in the President's Budget, a process which includes management review meetings with policy level agency staff, preparation of decision papers on management issues for the Director, and participation in the passback and appeals process. It assumes primary responsibility for writing the Management Report presented with the budget. In addition, the Division maintains a computerized system for tracking the execution of management initiatives. Provides staff support for the President's Council on Management Improvement, (PCMI). Provides internal administrative support for the Associate Director for Management and the management divisions. The Division also develops and coordinates external activities in intergovernmental affairs.

MAJOR WORKLOAD ACTIVITIES IN 1986

- Planned and coordinated the management divisions' participation in the preparation of the President's Budget.
- Continued efforts related to intergovernmental relations and management division support to Congressional and public affairs.
- Evaluated and improved the Federal Assistance Award Data System and the Consolidated Federal Funds Report.
- Provided administrative support to the management divisions.

EXPECTED EMPHASIS IN 1987

- Coordinate and extend the management divisions' participation in the preparation of the President's Budget.
- Track the implementation of management initiatives included in the 1987 Budget.
- Prepare the Management Report to accompany the President's 1988 Budget.
- Continue efforts related to intergovernmental relations and management divisions' support to Congressional and public affairs.
- Continue to improve the Federal Assistance Award Data System and the Consolidated Federal Funds Report.
- Continue support for the President's Council on Management Improvement and its member Assistant Secretaries for Management.
- Continue to provide management-side administrative support.

VI. Agency and Program Responsibilities

AGENCY AND PROGRAM RESPONSIBILITIES ASSIGNED TO:

NATIONAL SECURITY DIVISION

Air Force, Department of the
  (see Defense Department)

American Battle Monuments Commission

Army, Department of the
  (see Defense Department)

Central Intelligence Agency

Defense Intelligence Agency

Defense Investigative Service

Defense Mapping Agency

Defense, Department of:

- Military Functions:
  - Personnel, Civilian
  - Personnel, Military
  - Personnel, Reserve
  - Personnel, Retired
  - Operations, Ground Forces
  - Operations, Tactical Air
  - Operations, Naval Forces
  - Operations, Air Force
  - Procurement, Ground Forces
  - Procurement, Tactical Air
  - Procurement, Naval Forces
  - Procurement, Air Force Missile
  - Research and Development
  - Military Construction
  - Family Housing
- Civil Functions:
  - Cemeterial expenses
  - Wildlife conservation
  - US Soldiers & Airmen's Home

Intelligence Community Staff

National Security Agency

National Security Council

Navy, Department of the

Selective Service System

INTERNATIONAL AFFAIRS DIVISION

African Development Foundation

Agency for International Development

Arms Control and Disarmament Agency, US

Board for International Broadcasting

Defense Security Assistance Agency

Export-Import Bank of the United States

Food Aid Program

Foreign Military Sales Program

InterAmerican Foundation

International Boundary and Water Commission
  (State)

International economic policy analysis

Interagency mechanisms that consider
  international economic and other policies

International Security Assistance Programs

International Trade Commission

Japan-US Friendship Commission

Multilateral Development Banks

Office of Water Policy (Interior)

Overseas Private Investment Corporation

Peace Corps

State, Department of

Trade and Development Program

United States Information Agency

United States Institute of Peace

United States Trade Representative, Office of

HEALTH AND INCOME MAINTENANCE DIVISION

Adoption Assistance

Aging, Administration on

Aid to Families with Dependent Children

- Alcohol, Drug Abuse, and Mental Health Administration
  - National Institute of Mental Health
  - National Institute on Alcohol Abuse and Alcoholism
  - National Institute on Drug Abuse
  - Saint Elizabeths Hospital
  - Administration for Developmental Disabilities
- Administration for Native Americans
- Black Lung Program
- Bureau of Health Care Delivery Assistance Care
- Bureau of Health Professions
- Bureau of HMOs and Resource Development
- Centers for Disease Control
  - Center for Environmental Health
  - Center for Health Promotion and Education
  - Center for Infectious Diseases
  - Center for Prevention Services
  - Center for Professional Development and Training
  - National Institute for Occupational Safety and Health
- Child Care Feeding Program
- Child Nutrition
- Child Support Enforcement, Office of (HHS)
- Child Welfare Block Grants
- Children, Youth, and Families, Administration for (HHS)
- Children's Bureau (HHS)
- Commodity Supplemental Feeding Program
- Consumer Affairs, Office of
- Consumer Product Safety Commission
- Community Services Block Grant
- Community Services, Office of
- Cuban/Haitian Entrants Assistance
- Disability Insurance
- Elderly Feeding
- Emergency Assistance
- Family Assistance, Office of (HHS)
- Federal Windfall Subsides
- Food and Drug Administration (HHS)
  - Bureau of Foods
  - National Center for Drugs and Biologies
  - National Center for Radiological Health
  - National Center for Veterinary Medicine
  - National Center for Toxicological Research
- Federal Council on the Aging
- Food and Nutrition Service (USDA)
- Food Donations
- Food Program Administration
- Food Stamps
- Foster Care
- Head Start
- Health Resources and Services Administration (HHS)
- Health and Human Services, Department of (General)
  - Office of the Secretary
  - Office for Civil Rights
  - Office of the Inspector General
- Health, Office of the Assistant Secretary for (HHS)
  - Adolescent Pregnancy
  - Health Block Grants
  - Health Maintenance Organizations
  - National Center for Health Services Research and Health Care Technology Assessment
  - National Center for Health Statistics
  - Office of Smoking and Health
- Health Care Financing Administration (HHS)
  - Medicaid/Medicare ProgramManagement
  - Health Financing Research
  - Survey and Certification
- Indian Health Service
- Legal Services Corporation
- Low Income Home Energy Assistance
- Medicaid
- Medicare

Milwaukee Food Administration

National Center for Child Abuse and Neglect

National Institute for Occupational Safety and Health (under CDC)

National Institutes of Health

- National Cancer Institute
- National Heart, Lung and Blood Institute
- National Institute of Dental Research
- National Institute of Arthritis, Musculoskeletal and Skin Diseases
- National Institute of Neurological and Communicative Disorders and Stroke
- National Institute of Diabetes, Digestive and Kidney Diseases
- National Institute of Allergy and Infectious Diseases
- National Institute of General Medical Sciences
- National Institute of Child Health and Human Development
- National Eye Institute
- National Institute of Environmental Health Sciences
- National Institute on Aging
- Research Resources
- Fogarty Center
- National Library of Medicine

Nutrition Assistance for Puerto Rico

Office of Community Services (HHS)

Office of Refugee Resettlement

Office of Human Development Services (HHS)

Old Age and Survivors Insurance

Peer Review Organization

Planning and Evaluation, Assistant Secretary

President's Council on Physical Fitness and Sports

Public Health Service

Public Health Service Commissioned Corps

Railroad Retirement Board

Railroad Sickness Insurance

Railroad Unemployment Insurance

Railroad Social Security Equivalent Benefits

Railroad Industry Pension

Refugee Assistance Program

Repatriation of U.S. Citizens

School Breakfast

School Lunch

Section 32

Social Security Administration (HHS)

Social Services Block Grant

Special Milk Program

Special Supplemental Food Program for Women, Infants and Children (WIC)

Summer Feeding Program

Supplemental Security Income

LABOR, VETERANS, AND EDUCATION DIVISION

ACTION

Advisory Commission on Intergovernmental Relations

Architectural and Transportation Barriers Compliance Board

Commission on Civil Rights

Committee for Purchase from the Blind and Other Severely Handicapped

Department of Education

Department of Labor

Equal Employment Opportunity Commission

Federal Election Commission

Federal Mediation and Conciliation Service

Federal Mine Safety and Health Review Commission

Harry S. Truman Scholarship Foundation

Institute of Museum Services

National Afro-American History and Culture Commission

National Commission on Libraries and Information Science

National Council on the Handicapped

National Endowment for the Arts

National Endowment for the Humanities

National Labor Relations Board

National Mediation Board

Occupational Safety and Health Review Commission

Veterans Administration

TRANSPORTATION, COMMERCE, AND JUSTICE DIVISION

Administrative Conference of the United States

AMTRAK

Appalachian Regional Commission

Attorneys, U.S. (Justice)

Bicentennial of the Constitution Commission

Census, Bureau of (Commerce)

Christopher Columbus Quincentenary Jubilee Commission

Coast Guard (Transportation)

Commerce, Department of

Community Relations Service (Justice)

Conrail

Corporation for Public Broadcasting

Drug Enforcement Administration (Justice)

Economic Analysis, Bureau of (Commerce)

Economic Development Administration (Commerce)

Federal Aviation Administration (Transportation)

Federal Bureau of Investigations (Justice)

Federal Bureau of Prisons (Justice)

Federal Communications Commission

Federal Highway Administration (Transportation)

Federal Maritime Commission

Federal Prisons Industries, Inc. (Justice)

Federal Property Resource Service (GSA)

Federal Railroad Administration (Transportation)

Federal Supply Service (GSA)

Federal Trade Commission

Foreign Claims Settlement Commission (Justice)

General Services Administration

Immigration and Naturalization Service (Justice)

Industrial Economics, Bureau of (Commerce)

Inspectors General (Commerce, GSA, SBA, and Transportation

International Trade Administration (Commerce)

Interstate Commerce Commission

Justice, Department of

Legal Divisions (Justice)

Marine Mammal Commission

Maritime Administration (Transportation)

Marshals Service, U.S. (Justice)

Minority Business Development Agency (Commerce)

National Archives and Records Administration

National Bureau of Standards (Commerce)

National Highway Traffic Safety Administration (Transportation)

National Institute for Building Sciences

National Oceanic and Atmospheric Administration (Commerce)

National Technical Information Service (Commerce)

National Telecommunications and Information Administration (Commerce)

National Transportation Safety Board

Office of Information Resources Management (GSA)

Office of Justice Programs (Justice)

Offices of the Secretary (Commerce, DOT)

Panama Canal Commission

Pardon Attorney (Justice)

Parole Commission, U.S. (Justice)

Patent and Trademark Office (Commerce)

Public Buildings Service (GSA)

Research Special Programs Administration (DOT)

Saint Lawrence Seaway Development Corporation (Transportation)

Small Business Administration

State Justice Institute

Transportation, Department of

U.S. Travel and Tourism Administration (Commerce)

U.S. Railway Association

Urban Mass Transportation Administration (Transportation)

Washington Metropolitan Area Transit Authority

TREASURY, HOUSING, AND PERSONNEL

Community Planning and Development (HUD)

Fair Housing and Equal Opportunity, Office of (HUD)

Federal Deposit Insurance Corporation

Federal Home Loan Bank Board

Federal Home Loan Banks

Federal Home Loan Mortgage Corporation

Federal Housing Administration (HUD)

Federal National Mortgage Association

Federal Savings and Loan Insurance Corporation

Government National Mortgage Association (HUD)

Housing and Urban Development, Department of

Inspectors General HUD, and Treasury

Interstate Land Sales, Office of (HUD)

National Credit Union Administration

Neighborhood Reinvestment Corporation

Policy Development and Research (HUD)

Public and Indian Housing (HUD)

Solar and Energy Conservation Bank (HUD)

Advisory Committee on Federal Pay

Alcohol, Tobacco and Firearms, Bureau of (Treasury)

Commodity Futures Trading Commission

Compensation of the President (EOP)

Comptroller of the Currency, Office of the (Treasury)

Council of Economic Advisers (EOP)

Customs Service, US (Treasury)

District of Columbia Government

Engraving and Printing, Bureau of (Treasury)

Exchange Stabilization Fund (Treasury)

Executive Residence (EOP)

Executive, Legislative, and Judicial Salaries, Commission on

Federal Emergency Management Agency

Federal Financing Bank (Treasury)

Federal Labor Relations Authority

Federal Reserve Board

Financial Management Service (Treasury)

Internal Revenue Service (Treasury)

Law Enforcement Training Center, Consolidated Federal (Treasury)

Merit Systems Protection Board

United States Mint (Treasury)

Office of Administration (EOP)

Office of Personnel Management

Office of Policy Development (EOP)

Official Residence of the Vice President (EOP)

Postal Service, United States

Public Debt, Bureau of (Treasury)

Revenue Sharing, Office of (Treasury)

Secret Service, U.S. (Treasury)

Securities and Exchange Commission

Special Assistance to the President (EOP)

Treasury, Department of

White House Office (EOP)

NATURAL RESOURCES DIVISION

Advisory Council on Historic Preservation

Agricultural Cooperative Service (Agriculture)

Agricultural Marketing Service (Agriculture)

Agricultural Research Service (Agriculture)

Agricultural Stabilization and Conservation Service (Agriculture)

Agriculture, Department of (General)

Animal and Plant Health Inspection Service (Agriculture)

Commission on Fine Arts

Commodity Credit Corporation (Agriculture)

Cooperative State Research Service (Agriculture)

Council on Environmental Quality

Delaware River Basin Commission

Economic Research Service (Agriculture)

Engineers, Corps of (Civil)

Environmental Protection Agency

Extension Service (Agriculture)

Farm Credit Administration

Federal Crop Insurance Corporation (Agriculture)

Federal Grain Inspection Service (Agriculture)

Fish and Wildlife Service (Interior)

Food Safety and Inspection Service (Agriculture)

Foreign Agricultural Service (Agriculture)

Foreign Service (Agriculture)

Franklin D. Roosevelt Memorial Commission

General Sales Manager (Agriculture)

Geological Survey (Interior)

Holocaust Memorial Council

Human Nutrition Information Service

Indian Affairs, Bureau of (Interior)

Interstate Commission on Potomac River

Interior, Department of the

International Boundary and Water Commission (State)

John F. Kennedy Center for the Performing Arts (Interior)

Land Management, Bureau of (Interior)

Minerals Management Service (Interior)

Mines, Bureau of (Interior)

National Agricultural Library (Agriculture)

National Capital Planning Commission

National Council on Public Works Improvement

National Park Service (Interior)

Native Hawaiian Study Commission

Navajo & Hopi Relocation Commission

Office of International Cooperation and Development (Agriculture)

Office of Rural Development (Agriculture)

Office of Transportation (Agriculture)

Office of Water Policy (Interior)

Packers and Stockyards Administration (Agriculture)

Pennsylvania Avenue Development Corporation

Reclamation, Bureau of (Interior)

Rural Electrification Administration (Agriculture)

Rural Telephone Bank (Agriculture)

Soil Conservation Service (Agriculture)

Statistical Reporting Service (Agriculture)

Surface Mining, Reclamation and Enforcement, Office of (Interior)

Susquehanna River Basin Commission

Territorial Government (Interior)

Trust Territory of the Pacific (Interior)

Water Resources Council

World Food and Agricultural Outlook and Situation Board (Agriculture)

ENERGY AND SCIENCE DIVISION

Aeronautics and Space Technology, Office of (NASA)

Civilian Radioactive Waste Management, Office of (Energy)

Commercial Programs, Office of (NASA)

Conservation and Renewable Energy, Office of (Energy)

Defense Programs, Office of (Energy)

Economic Regulatory Administration (Energy)

Energy, Department of

Energy Information Administration (Energy)

Energy Research, Office of (Energy)

Federal Energy Regulatory Commission (Energy)

Federal Inspector, Alaska Natural Gas Transportation System

Fossil Energy, Office of (Energy)

International Affairs and Energy Emergencies, Office of (Energy)

National Aeronautics and Space Administration

National Gallery of Art

National Science Foundation

Naval Petroleum Reserves (Energy)

Nuclear Energy, Office of (Energy)

Nuclear Regulatory Commission

Power Marketing Administrations (Energy)

Science and Technology Policy, Office of

Smithsonian Institution (except JFK Center)

Space Flight, Office of (NASA)

Space Science and Applications, Office of (NASA)

Space Station, Office of (NASA)

Space Tracking and Data Systems, Office of (NASA)

Strategic Petroleum Reserve (Energy)

Synthetic Fuels Corporation

Tennessee Valley Authority

Woodrow Wilson International Center for Scholars

BUDGET REVIEW DIVISION

Legislative Branch

- House of Representatives
- Senate
- Joint Items
- Congressional Budget Office
- Architect of the Capitol
- Government Printing Office
- General Accounting Office
- U.S. Tax Court
- Other Legislative Branch Agencies

Judiciary

- Supreme Court of the United States
- U.S. Court of Appeals for the Federal Court
- Court of Customs and Patent Appeals
- U.S. Court of International Trade
- Court of Claims
- Courts of Appeals, District Courts, and other Judicial Services
- Administrative Office of the U.S. Courts
- Federal Judicial Center
- Bicentennial Expenses, the Judiciary

VII. Legal Authorities

LEGAL AUTHORITIES

The legal authorities of the Office of Management and Budget are defined in the following:

Chapter 5, Title 31, United States Code, which established the Office of Management and Budget (OMB) and placed the Office of Information and Regulatory Affairs in OMB.

Chapter 11, Title 31, United States Code, which provides for the preparation and submission of the Budget of the United States, including amendments and supplementals thereto, for the apportionment of appropriations, for the provision of information pertaining to the Budget, and improvements in governmental budgeting and accounting methods and procedures.

The Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.), which provides for the deferral or proposed rescission of budget authority.

Debt Collection Act of 1982, (P.L. 97–365), which applies private sector techniques to the collection of outstanding debts owed the Federal government and authorizes OMB to determine those federal loan programs for which tax delinquency status may be disclosed by the Secretary of the Treasury and to establish regulations requiring each agency with outstanding debts to prepare and transmit to the Director and the Treasury reports on the status of loans and accounts receivable managed by the agency

Act of October 30, 1965 (40 U.S.C. 759), which deals with automatic data processing equipment, and under which the Office provides guidelines and information for the management of automatic data processing activities in the Federal Government.

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334), which requires the Office to prescribe rules and regulations for the coordination of Federal aid in metropolitan areas.

Intergovernmental Cooperation Act of 1968 (42 U.S.C. 42014244), and the President's memorandum of November 8, 1968, delegating certain authority under that Act (33 F.R. 16487), which require issuance of rules and regulations with regard to: (1) improved administration of grants–in–aid to the States; (2) special or technical services to State and local units of government; and (3) the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development.

Office of Federal Procurement Policy Act (P.L. 93–400, as amended by P.L. 96–83 and P.L. 98–191) established, in the Office of Management and Budget, the Office of Federal Procurement Policy.

Privacy Act of 1974 (P.L. 93–579) requires the Office to provide for oversight and to issue guidelines for implementation of the Act.

44 U.S.C. 1108, which requires approval of the use of appropriated funds for the printing of periodicals

44 U.S.C. 3501–3511 (the Federal Reports Act), which requires coordination of Federal reporting and statistical services in order to eliminate duplication, reduce the cost of such services, and minimize the burden on the public of furnishing information to Federal agencies.

Paperwork Reduction Act of 1980 (P.L. 96–511) strengthens the role of OMB in reducing the paperwork burden imposed on the public by the Federal government, and sets a paperwork reduction goal of 15 percent by October 1, 1982, and an additional 10 percent a year later. The act sets up a new unit (the Office of Information and Regulatory Affairs) in the Office of Management and Budget.

EXECUTIVE ORDERS

Executive Order No. 8248 of September 8, 1939 (4 F.R. 3864), which specifies the functions of the Office as part of the Executive Office of the President.

Executive Order No. 9094 of March 10, 1942 (7 F.R. 1972), which provides for coordination and planning of Federal mapping and chartmaking activities.

Executive Order No. 10579 of November 30, 1954 (19 F.R. 7925), which provides for final decision on appeal by an agency from any determination by the Administrator of General Services with respect to the establishment of an interagency motor vehicle pool or system.

Executive Order No. 10654 of January 20, 1956 (16 U.S.C. 1005) which delegates certain functions under the Watershed Protection and Flood Prevention Act.

Executive Order No. 10900 of January 5, 1961 (26 F.R. 143), as amended, which provides for fixing amounts of certain foreign currencies to be used for various purposes and waiving certain statutory requirements.

Executive Order No. 11030 of June 19, 1962 (27 F.R. 5847), as amended, which provides for clearance for the President of Executive Orders and proclamations.

Executive Order No. 11060 of November 7, 1962 (27 F.R. 10925), which provides for determining and establishing rates of hospital care and treatment furnished by the United States, for use in connection with recovery from tortuously liable third persons.

Executive Order No. 11541 of July 1, 1970 (35 F.R. 10737), as amended, which delegated to the Director of the Office of Management and Budget the functions of the Bureau of the Budget which were transferred to the President by Reorganization Plan No. 2 of 1970.

Executive Order No. 11592 of May 6, 1971 (36 F.R. 8555), which delegates to the Director of the Office of Management and Budget the function of granting certain approvals under provisions of the Rivers and Harbors Act of 1970 and the Flood Control Act of 1970.

Executive Order No. 11609 of July 22, 1971 (36 F.R. 13747), as amended, which delegates to the Director of the Office of Management and Budget the exercise of statutory authorities of the President involving (1) regulatory functions with respect to quarters and facilities, (2) transfers of balances of appropriations, (3) land acquisitions, contracts for land acquisitions, and other land transactions, (4) approval of regulations relating to rental of substandard housing for members of the uniformed services, (5) approval of use of funds for printing of periodicals, and (6) allocation of funds for management improvement.

Executive Order No. 11672 of June 6, 1972 (37 F.R. 11455), which requires approval by the Director of property transferred from the Postal Service to other agencies.

Executive Order No. 11721 of May 23, 1973 (38 F.R. 13717) as amended, which designates the Director of the Office of Management and Budget, the Secretary of Labor and the Director of the Office of Personnel Management, as the President's agents under 5 U.S.C. 5305, relating to Federal pay administration.

Executive Order No. 11747 of November 23, 1973 (38 F.R. 30993), which delegates certain functions under the Water Resources Planning Act to the Director, Office of Management and Budget.

Executive Order No. 11758 of January 15, 1974 (38 F.R. 1075) as amended, delegating to the Director certain functions under the Rehabilitation Act of 1973.

Executive Order No. 11845 of March 24, 1975 (40 F.R. 13299) which delegates to the Director certain functions of the Impoundment Control Act of 1974.

Executive Order No. 11874 of July 25, 1975 (40 F.R. 31737) delegating certain functions to the Director regarding support assistance to the Legal Services Corporation.

Executive Order No. 11893 of December 31, 1975 (41 F.R. 1040) transferring certain management functions from GSA to the Director.

Executive Order No. 11961 of January 19, 1977 (42 F.R. 4321) provides for OMB to exercise oversight over certain international investment surveys.

Executive Order No. 12039 of February 24, 1978 (43 F.R. 8095) delegates certain science and technology functions to the Director, including those related to facilitating the transfer and utilization of research and development results, and those related to reorganization functions.

Executive Order No. 12036 of March 27, 1978 (43 F.R. 13349) delegates to the Director the responsibility for telecommunications procurement and for deciding Government appeals from radio frequency assignments by the Secretary of Commerce.

Executive Order No. 12088 of October 13, 1978 (43 F.R. 47707) assigns oversight responsibility to the Director for agency pollution control plans.

Executive Order No. 12152 of August 14, 1979 (44 F.R. 48143) which requires establishing regulation and oversight of systematic review by agencies of their operation.

Executive Order No. 12185 of December 17, 1979 (45 F.R. 75093) which delegates to the Director certain authorities and responsibilities vested in the President by the Power Plant and Industrial Fuel Use Act of 1978

Executive Order No. 12196 of February 26, 1980 (45 F.R. 12769), as amended by Executive Order 12223, provides that the Director of the Office of Management and Budget is responsible for approving basic program elements to be issued by the Secretary of Labor in order to assist agencies in establishing occupational safety and health committees and operate effective occupational safety and health programs.

Executive Order No. 12291 of February 17, 1981 (46 F.R. 33) assigns to the Director the responsibility for management and oversight of the Governmentwide regulatory improvement program.

Executive Order No. 12352 of March 17, 1982 (47 F.R. 12125) delegates to the Director of the Office of Management and Budget, through the Office of Federal Procurement Policy, responsibility for providing policy guidance to achieve procurement reform.

Executive Order No. 12498 of January 8, 1985 (50F.R.) delegates to the Director of the Office of Management and Budget responsibility for conducting the President's Annual Regulatory Planning Program.

WEDNESDAY, APRIL 16, 1986.

PUBLIC BUILDINGS SERVICE, GENERAL SERVICE ADMINISTRATION

WITNESS

HON. PAUL E. KANJORSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. ROYBAL. The committee will be in order.

Mr. KANJORSKI. Mr. Chairman, I have a prepared statement and I would ask that it be entered into the record, and it gives a detail of what we are asking for in this particular area. But I would like to take the opportunity to give you a rough synopsis.

Mr. ROYBAL. Without objection, that statement will appear in the record at this point in its entirety. You may proceed to summarize.

Mr. KANJORSKI. Thank you, Mr. Chairman.

I represent the 11th District of Pennsylvania, and we have in that district located in the city of Wilkes-Barre a data operations center of the Social Security Administration, one of three in the country.

The uniqueness is that the Social Security Administration since 1978 has recognized the need to consolidate the present locations of the various facilities that contain this operation, and in spite of the fact that they are not consolidated in one building it is the most productive of all the three centers that perform this type of work in the United States. The productivity level of the workers is the highest, the long-term history of employment, staying on in the area and lack of the Friday-Monday syndrome is crediting the work force in this particular Social Security center as being of the highest caliber in the United States.

Now, what in 1978 was requested by the SSA was a new building and based on the new building they felt they could further improve and save the Social Security Administration additional dollars in the processing of this material.

It has over the course of the last eight years progressed to various levels where in 1982 there was a construction agreement passed through the House and funded but was struck out in the United States Senate because their Public Works Committee did not agree with that aspect.

In 1983 they came back and decided to buy an existing building outside the city of Wilkes-Barre and remodel it at approximately the cost of $21 to $22 million.

Because of the failure to negotiate that settlement, that transaction never went through and the funds remained in the budget but were unexpended to my understanding.

When I took office in January 1985, it has been one of my commitments that, one, we needed to save the 1200 jobs located in the

Wilkes-Barre Social Security center; but, two, in order to be competitive and maintain our productivity level as the highest in the country for this type of facility we had to honor the commitment of the Social Security Administration. There was a second reason for doing this. Shortly within a period of a year to 18 months the Social Security Administration in computerizing this service will be putting in approximately three and a half million dollars worth of computer equipment. If they put it into the old facilities, once installed this equipment will be lost if they move.

So we run the risk of losing the investment of the three and a half million dollars of federal funds if we continue to use the old facilities they are presently in.

Secondly, it has been determined by an analysis of the Social Security Administration that a million dollars a year is lost in inefficiency using the existing three buildings. So that when you combine the loss of the three and a half million dollars in computer work that is required under the law to be put in, the additional loss of the one million dollars a year from the failure of having the facility properly located, I suggest that the request that has been made by the Public Works Committee to fund a $20,672,000 building consisting of 313,600 gross square feet of space as a federal building in Wilkes-Barre to house this facility is a good and cautious investment of the United States Government.

In less than 12 years this building will be paid for from savings alone. I would caution one other reason why we have run into resistance in this building, and I suggest that perhaps this committee should look into it. That is the Administration and the GSA proposes that federal buildings be built only in areas where there is lessening of the cost of square foot on a rental basis, and the psychology behind this is we should spend our few federal dollars where they will best serve the immediate return and reduce the rate and rent cost to the federal government. But if this argument were carried to its logical conclusion, federal buildings would only be built in the major cities of the United States and never built in the rural areas. Although we may save on the square foot rental cost, in the future we will find we will pay a great deal more for our help, we will have a greater turnover of work force, and we will have a lesser efficiency because of the less experience of the work force who in rural or nonurban areas such as Wilkes-Barre are able to stay on and make this a lifetime vocation.

So I would suggest that we are not only asking that this building be approved for the purposes that it is the most efficient expenditure of federal funds to do this, but also it should be a notice to the General Services Administration that perhaps they should rethink their proposition as to where buildings should be built and for what purposes and what formula should be used.

I would seriously urge this committee to enter into the fiscal 1987 appropriations budget the sufficient funds as requested to complete the construction of this building after eight years. With that accomplishment if it passes through the House and we can move it through the Senate and have acquiescence of the President by September, by the fiscal year starting October 1, the architectural plans can be drawn, the building can be constructed, we can save the three and a half million dollars of wasted equipment that would be installed in the old buildings and within a period of eight to twelve years we will have paid for this investment by the federal government; but, first and foremost, we will have saved the most efficient Social Security work force in the United States that now exists in this facility in Wilkes-Barre and we will have made a commitment to the depressed areas of this country that the federal government is not going to pull out where work of this type is needed and necessary.

I thank the chairman for this opportunity to make this presentation.

[The statement of Paul E. Kanjorski follows:]

PAUL E. KANJORSKI
11th District, Pennsylvania

Committee on Banking, Finance
and Urban Affairs

Committee on Veterans' Affairs

Democratic Steering and
Policy Committee

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TESTIMONY
OF
CONGRESSMAN
PAUL E. KANJORSKI

BEFORE THE
HOUSE APPROPRIATIONS
SUBCOMMITTEE ON
TREASURY, POSTAL SERVICE & GENERAL GOVERNMENT

APRIL 16, 1986

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

Mr. Chairman, I would like to express my sincere appreciation to you and the members of the Subcommittee for the opportunity to testify today on an issue of major importance to the Social Security Administration (SSA), millions of American citizens, and the City of Wilkes-Barre.

I appear here today to ask this Subcommittee to support the action taken last December by the Public Works and Transportation Committee when that Committee approved a prospectus authorizing for appropriation $20,672,000 for a 313,600 gross square foot federal building in Wilkes-Barre. This appropriation is necessary to satisfy the space requirements of the Social Security Administration's Wilkes-Barre Data Operations Center.

The Wilkes-Barre Data Operations Center (WBDOC) is the largest and oldest of the SSA's three data centers in the country. The WBDOC annually processes over 62 million Annual Wage Reports, which represent some $750 billion in gross wages and $81 billion in employee/employer gross taxes, and maintains 9 million SSI folders in an active storage file. In addition, the WBDOC processes 2.5 million requests for earnings records received directly from the public and 2.8 million Social Security number applications. The efficiency of this center affects the record-keeping activities of the SSA and the IRS for almost 50% of all American employees.

The WBDOC is currently housed in three separate buildings throughout Wilkes-Barre. Since 1978, the Social Security Administration has expressed its desire and need to consolidate into a single facility. Ms. Marilyn O'Connell , Director of Material Resources for the SSA, testified last year that, "The current split of operations causes inefficiencies and increases administrative and operating costs due to the need for duplicate receiving and storage, increased security needs, additional rents and utilities costs, and the inaccessibility of vital records, as well as added costs for the transportation of workloads and staff between buildings as the work moves through various operations." Ms. O'Connell also stated that the inefficiencies cost the SSA over $1 million per year in increased expenditures.

Mr. Chairman, it is presently costing the federal government $1.3 million per year for rental space in Wilkes-Barre. The SSA is also planning to upgrade the computer equipment at the WBDOC in 1987, at a cost of $3.5 million, which will not be recoverable if the equipment is installed at the present location. When these two cost factors are combined with the $1 million per year lost due to inefficiencies, this federal building will pay for itself in only 8 years. If I can quote Lee Iacocca, "If you can find a better deal, take it."

Mr. Chairman, I feel that construction of this building is in the best interest of the federal government, the Social Security Administration, the 1100 employees of the WBDOC and the city of Wilkes-Barre. This essential project has already been delayed for far too long. I would urge this Subcommittee to support the authorization as reported by the Public Works and Transportation Committee and appropriate the necessary funds for completion of this project. Thank You.

Mr. **Roybal**. Well, thank you, Mr. Kanjorski. Since it will be difficult for me to visualize the location of the buildings and things of that kind, because I have not been to the site, I would like to ask you some questions with regard to the situation.

The data operations center is now housed in a particular building, is it not?

Mr. **Kanjorski**. No. In three separate buildings. That is part of the problem, moving the material around and transporting and all.

Mr. **Roybal**. The fact that it is housed in three different places would make it, one, inefficient and, two, costly.

Mr. **Kanjorski**. Yes.

Mr. **Roybal**. Is it the intent to bring all these three elements together in one building?

Mr. **Kanjorski**. Yes.

Mr. **Roybal**. Which will cost $22 million approximately?

Mr. **Kanjorski**. It will cost $20,672,000.

Mr. **Roybal**. That is $20,672,000.

Mr. **Kanjorski**. Yes.

Mr. **Roybal**. And that will build how many square feet?

Mr. **Kanjorski**. That will build 313,600 square feet.

Mr. **Roybal**. As you know, before this committee can act we usually require, as is the rule under the House, that the project be authorized by both the House and the Senate Committees of Public Works.

I was under the impression that the Senate Committee on Public Works had already approved this.

Mr. **Kanjorski**. No, they have not, Mr. Chairman.

Mr. **Roybal**. What is the situation?

Mr. **Kanjorski**. The House committee has approved it. The Senate committee has not approved it and basically has not approved it on the interpretation of how to best spend federal dollars that I have just given you. They have taken the position that since major cities like Philadelphia, Los Angeles and New York have higher rental costs that federal dollars should be spend in building federal facilities in these cities and away from the rental area.

Mr. **Roybal**. Then I was mistaken. I thought it was the Senate and not the House. It turns out it is the House that approved it.

Mr. **Kanjorski**. Yes. I have just handed you the resolution of the full Public Works in the House; and if this subcommittee approved it and the full committee marks it up and it becomes a part of the appropriations bill and gets passed by the House, it will complete all the effort on the House side.

Mr. **Roybal**. This approval was December 11, 1985.

Mr. **Kanjorski**. Yes.

Mr. **Roybal**. The approval was made by the House Committee on Public Works. Now, it is going to be necessary to get this same kind of approval from the Senate. Is that within the realm of possibility?

Mr. **Kanjorski**. I do not believe so, Mr. Chairman. I believe Senator Stafford has taken a very strong position in the Senate. I have talked with Senator Specter on that subject, and they have not been successful in gaining authorization for several years now, and the struggle in the Senate is in regard to how GSA should expend their money.

You have to understand we have a conflict between the Social Security Administration who want and asked and recommended this building, but the GSA—I should say the Administration generally is opposed to the building. So they have done everything they can in order to inhibit the construction of the building.

Mr. **Roybal**. It seems to me that the Social Security Administration knows what the facts are; and if the facts are that it is going to ultimately save money, that it is, in fact, going to provide more efficiency, that that in itself would justify an expenditure of $20.6 million.

Mr. **Kanjorski**. We would normally think that would be logical, Mr. Chairman.

Mr. **Roybal**. Is there any possibility then for the committee to help you?

Mr. **Kanjorski**. Yes.

Mr. **Roybal**. How can we get it through the Senate?

Mr. **Kanjorski**. It is my understanding that if the committee approves this and puts it in the House bill when the House bill goes to the Senate it at that time can be approved over there on the appropriations side, that they generally work out an agreement. Those projects approved on the House side and those projects approved on the Senate side but not concurrently approved by either side will remain in the bill or in the continuing resolution. I look to it as being part of the CR since, frankly, although not experienced in appropriation matters nor of a long term in Congress, I have not seen a great deal of success in the last several years of getting appropriations bills appropriately passed by the two houses.

Mr. **Roybal**. But this time is going to be different. They tell us we are going to pass all 13 appropriation bills and we are not going to operate on a CR. Last year this committee did, in fact, pass the bill.

Mr. **Kanjorski**. Yes, sir.

Mr. **Roybal**. That was, after a lot of struggle. We intend to pass our bill this year also.

Mr. **Kanjorski**. Yes, sir.

Mr. **Roybal**. That does not mean all 13 bills will be passed. But we will have to work closely with the Senate and try to persuade the Senate to also authorize the building. We will do everything we possibly can to be of assistance to you in that regard.

Mr. **Kanjorski**. I appreciate that, Mr. Chairman. I talked with Senator Specter this morning and asked him to do everything he can, and on your discussion with me today I will make inquiries of the Public Works Committee of the Senate to see if there is a possibility that I can testify and further that activity over there.

Mr. **Roybal**. Well, if it is possible, I would like to go out there and see the site myself, to assess what the need is and actually make a recommendation to the members of my committee based on personal knowledge—which I do not have at the moment.

Mr. **Kanjorski**. I would appreciate that and I would offer, Mr. Chairman, to give you a personal guided tour and may I say further that the City of Wilkes-Barre is so interested in having this facility remain, perhaps I should give you a history of it.

I am the successor to Dan Flood, and Dan Flood was in the Congress of the United States in the great flood of 1972. Wilkes-Barre, Pennsylvania was struck by a multi-billion dollar disaster in 1972, and its downtown has been totally rebuilt. And this facility is the largest employer in its downtown area. That is the reason we wanted to maintain the jobs in downtown Wilkes-Barre, to keep it a vital—we call it the newest old city in America.

That is why it is very important. The City of Wilkes-Barre as a result has made a commitment to donate the land for this building to the federal government as their contribution. It is a major, major undertaking for the city and as the Representative of the area I see a need for a commitment by the federal government that we understand that we are going to have a federal presence in areas that have been in the economic decline in the nation for a long period of time.

Mr. ROYBAL. I did not realize that the land was being donated.

Mr. KANJORSKI. Oh, yes.

Mr. ROYBAL. That makes it even more interesting.

Mr. KANJORSKI. The entire package—the City of Wilkes-Barre has offered to do anything on this facility, including constructing it and lease it to the federal government or provide the land so the federal government could construct it or to find a private developer who would construct it and lease it. The importance of this building is that we maintain those 1200 jobs in a depressed city because they represent one percent of the work force in the area, and the area has suffered from economic depression for about 40 years since the decline of the coal industry, and it is just starting to come back over the last five-year period and we are trying to attract all the industry we can to our downtown and our renovated structures. But the commitment of the federal government is a major part of the downtown commitment.

If this structure were to leave or go to another area of the country because it no longer becomes competitive because of the inefficiences of the federal structure, it would be a real mistake. I would suggest that I have a great deal of documentation that I can make available to the committee that when Social Security studied this they looked at this opportunity not from the cost of the square foot basis for housing but for what they get out of the work force. You have a work force here that averages maybe 15 to 18 years of longevity with the federal government. They have very little turnover. These people work on computers. They do 60 percent of the W-2 processing in the United States. They work with the IRS. They work with the Social Security Administration withholding, and they are the most efficient in the United States on this type of work. We have three different facilities in the United States: one in California, one if Arizona and one in Wilkes-Barre.

If we do not make them competitive at some point in time and the Administration comes around and looks at the efficiency on a square foot basis, this facility may end up being closed merely because of the fact it is not properly housed. The shame is that it has not been properly housed for almost ten years now. All the agencies have recognized this, have made recommendations to solve the problem in any number of ways, and they have always fallen by the wayside, even to the extent that, as I indicated to the chairman the other day in a discussion, three years ago the funds were committed and appropriated to solve the problem but never properly used.

Mr. **Roybal**. Well, it seems to me that everyone is persuaded except maybe the Senate up to this point and GSA. Now, you said you had some additional information. Whatever it is that you have, please make it available to the committee and we will use it to great advantage, I can assure you.

Mr. **Kanjorski**. I appreciate that, sir.

Mr. **Roybal**. Mr. Skeen.

Mr. **Skeen**. I have no questions. I just want to welcome Paul. It sounds like he acquitted himself very well. You examined him very well.

Mr. **Roybal**. He certainly did. His argument is very persuasive.

Mr. **Skeen**. I can see your interest piqued when the land was donated.

Mr. **Roybal**. In any municipality I am interested when that happens. May I compliment you, Mr. Kanjorski, for an excellent presentation. We as a committee will do everything we possibly can to be of assistance.

Mr. **Kanjorski**. Thank you, Mr. Chairman.

Mr. **Roybal**. The committee will adjourn for just a short period of time here.

[Recess.]

WEDNESDAY, APRIL 16, 1986.

OFFICE OF INFORMATION AND REGULATORY AFFAIRS

WITNESS

HON. JACK BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ROYBAL. The committee will now recognize the gentleman from Texas, Mr. Brooks. You may proceed as you wish.

Mr. BROOKS. Thank you, Mr. Chairman and members of the subcommittee.

I will speak briefly and I have a—

Mr. SKEEN. Hope you do not mind our music outside here.

Mr. BROOKS. No, no. I appreciate the opportunity to be here and I have a statement I will submit for the record.

Mr. ROYBAL. That will appear in the record at this time in its entirety.

Mr. BROOKS. Just briefly, I will give my views on the Office of Information and Regulatory Affairs in the OMB.

As you know, I have recently written to both yourself and Chairman Whitten on this matter. Since OIRA has been operating without an authorization for almost three years, I strongly recommend that this subcommittee delete any further funding for this office until reauthorized by Congress.

I do not say this lightly. Congressman Horton, myself and others put a lot of time and effort into getting this office set up in 1980 with the passage of the Paperwork Reduction Act. I had high hopes for this legislation. Properly implemented, the act could have significantly reduced the paperwork and red tape requirements the government places on our citizens. Further, it could have significantly improved the acquisition and use of information technology by federal agencies.

Unfortunately, OIRA has ignored most of its responsibilities under the law. Instead, it has devoted the vast majority of its time and resources to the President's regulatory reform program under Executive Orders 12291 and 12498. Clearly, the interest of this office has centered on the substantive review of agency regulations in accordance with these Executive Orders.

It has perturbed not only myself but my friend John Dingell who shares my feeling that this is an unwarranted invasion of congressional authority.

As you know, OIRA was originally authorized for a three-year period ending September 30, 1983. In November of that year, the House passed H.R. 2718, the Paperwork Reduction Act Amendments of 1983. This bill would have authorized the office for an additional three-year period and placed additional restrictions on the activities of that office.

Unfortunately, the reauthorization bill got tied up in the Senate and was never passed. In the meantime, OIRA has shown little inclination to seek a new authorization. Apparently, in their eyes, they are getting along just fine without any further direction from Congress.

In other words, just send us the money and we will handle it the way we damn well please. That has been the apparent effect of what they wanted to do.

It is my firm conviction that Congress cannot stand by and let this office perform as it has in the past. I urge the subcommittee members to strike that $5.4 million earmarked for the Office of Information and Regulatory Affairs which has no authorization whatsoever and to provide no future funding until reauthorized by Congress.

I would add that the OMB director, Jim Miller, has indicated to me that he is interested in sitting down and discussing the future of this office and how its activities might be redirected. I would hope we can do this in the near future. But I remain convinced at this time we might as well remove the funds in the current appropriations bill; and if in the future Congress can reach an agreement with Mr. Miller or a reauthorization bill can be passed, then that will be adequate time to restore the appropriate funds.

[The statement of Jack Brooks follows:]

Statement of Congressman Jack Brooks
Before the Subcommittee on Treasury--Postal Service--
General Government
Committee on Appropriations
Wednesday, April 16, 1986
2:30 p.m.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY TO GIVE YOU MY VIEWS ON THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS (O.I.R.A.) WITHIN THE OFFICE OF MANAGEMENT AND BUDGET (O.M.B.).

AS YOU KNOW, I HAVE RECENTLY WRITTEN TO BOTH YOURSELF AND CHAIRMAN WHITTEN ON THIS MATTER. SINCE O.I.R.A. HAS BEEN OPERATING WITHOUT AN AUTHORIZATION FOR ALMOST THREE YEARS, I STRONGLY RECOMMEND THAT THIS SUBCOMMITTEE DELETE ANY FURTHER FUNDING FOR THIS OFFICE UNTIL REAUTHORIZED BY CONGRESS.

I DON'T SAY THIS LIGHTLY. CONGRESSMAN HORTON, MYSELF AND OTHERS PUT A LOT OF TIME AND EFFORT INTO GETTING THIS OFFICE SET UP IN 1980 WITH THE PASSAGE OF THE PAPERWORK REDUCTION ACT. I HAD HIGH HOPES FOR THIS LEGISLATION. PROPERLY IMPLEMENTED, THE ACT COULD HAVE SIGNIFICANTLY REDUCED THE PAPERWORK AND RED TAPE REQUIREMENTS THE GOVERNMENT PLACES ON OUR CITIZENS. FURTHER, IT COULD HAVE SIGNIFICANTLY IMPROVED THE ACQUISITION AND USE OF INFORMATION TECHNOLOGY BY FEDERAL AGENCIES. IN MY VIEW, THE ACT HAD THE POTENTIAL FOR SAVING BILLIONS OF DOLLARS WHILE MAKING THE GOVERNMENT MORE RESPONSIVE TO OUR CITIZENS.

UNFORTUNATELY, O.I.R.A. HAS IGNORED MOST OF ITS RESPONSIBILITIES UNDER THE LAW. INSTEAD, IT HAS DEVOTED THE VAST MAJORITY OF ITS TIME AND RESOURCES TO THE PRESIDENT'S REGULATORY REFORM PROGRAM UNDER EXECUTIVE ORDERS 12291 AND 12498. CLEARLY, THE INTEREST OF THIS OFFICE HAS CENTERED ON THE SUBSTANTIVE REVIEW OF AGENCY REGULATIONS IN ACCORDANCE WITH THESE EXECUTIVE ORDERS.

IN DOING SO, O.I.R.A. HAS HALTED OR INTERFERED WITH THE ISSUANCE OF A HOST OF AGENCY REGULATIONS, INCLUDING THOSE DEALING WITH THE HEALTH AND SAFETY OF OUR CITIZENS. ONE OF THESE ACTIONS BY O.I.R.A. RESULTED IN A COURT SUIT AGAINST THAT AGENCY. CONGRESSMEN DINGELL, RODINO, AND MYSELF, AMONG OTHERS, JOINED IN AN AMICUS BRIEF CHALLENGING THIS OFFICE'S AUTHORITY IN THIS AREA. AGAIN, NONE OF THIS ACTIVITY WAS SANCTIONED BY THE CONGRESS. IN FACT, O.I.R.A. WAS SPECIFICALLY DENIED AUTHORITY TO INVOLVE ITSELF IN MATTERS OUTSIDE THE SCOPE OF THE PAPERWORK ACT. I WOULD CALL YOUR ATTENTION TO SECTION 3520 OF THE ACT WHICH STATES "THERE ARE HEREBY AUTHORIZED TO BE APPROPRIATED TO CARRY OUT THE PROVISIONS OF THIS CHAPTER, AND FOR NO OTHER PURPOSE, . . ."

AS YOU KNOW, OIRA WAS ORIGINALLY AUTHORIZED FOR A THREE-YEAR PERIOD ENDING SEPTEMBER 30, 1983. IN NOVEMBER OF THAT YEAR, THE HOUSE PASSED H.R. 2718, THE PAPERWORK REDUCTION ACT AMENDMENTS OF 1983. THIS BILL WOULD HAVE AUTHORIZED THE OFFICE FOR AN ADDITIONAL THREE-YEAR PERIOD AND PLACED ADDITIONAL RESTRICTIONS ON THE ACTIVITIES OF THAT OFFICE.

UNFORTUNATELY, THE REAUTHORIZATION BILL GOT TIED UP IN THE SENATE AND WAS NEVER PASSED. IN THE MEANTIME, O.I.R.A. HAS SHOWN LITTLE INCLINATION TO SEEK A NEW AUTHORIZATION. APPARENTLY, IN THEIR EYES, THEY ARE GETTING ALONG JUST FINE WITHOUT ANY FURTHER DIRECTION FROM CONGRESS.

THIS ATTITUDE IS REFLECTIVE OF THE WAY THE OFFICE HAS OPERATED OVER THE FIRST FIVE YEARS OF ITS EXISTENCE. IT HAS CONSISTENTLY IGNORED ITS BROAD STATUTORY MANDATE AND IMPLEMENTED ONLY THOSE PARTS OF THE LAW THAT IT FOUND "WORTHWHILE". FOR EXAMPLE, THE ACT CONTAINS 13 TASKS THAT WERE MANDATED BY LAW TO BE COMPLETED WITHIN CERTAIN TIMEFRAMES. SIX WERE TO BE DONE BY 1982 -- ONLY ONE WAS COMPLETED. SEVEN TASKS WERE TO BE DONE BY 1983 -- AGAIN, ONLY ONE WAS COMPLETED. EVEN TODAY, O.I.R.A. HAS COMPLETED ONLY FOUR OF 13 TASKS SPECIFICALLY MANDATED BY STATUTE. THIS IS NOT MY IDEA OF "FAITHFUL EXECUTION OF THE LAW."

IN FACT, IN SOME CASES, THEY DO EXACTLY THE OPPOSITE OF WHAT THE LAW REQUIRES. FOR EXAMPLE, THE OFFICE IS REQUIRED BY LAW TO REVITALIZE AND SUPPORT THE FEDERAL COMPUTER STANDARDS PROGRAM. INSTEAD, O.M.B., WITH THE ASSISTANCE OF THIS OFFICE, HAS ATTEMPTED TO SLASH THE BUDGET OF THIS IMPORTANT ACTIVITY EVERY YEAR FOR THE LAST FIVE YEARS. THESE CUTS WOULD HAVE THE EFFECT OF KILLING THE PROGRAM. FORTUNATELY, CONGRESS HAS RESISTED THESE ATTEMPTS.

MORE RECENTLY, O.I.R.A. HAS BEEN INVOLVED IN EFFORTS BY FEDERAL AGENCIES TO CIRCUMVENT P.L. 98-369 -- THE COMPETITION IN CONTRACTING ACT. IN HEARINGS HELD BY MY COMMITTEE, WE LEARNED THAT THE OFFICE, WORKING WITH THE JUSTICE DEPARTMENT, HAS ATTEMPTED TO BLOCK A BID PROTEST CASE FROM BEING HEARD BY THE GSA BOARD OF CONTRACT APPEALS. THIS CASE INVOLVES A $300-500 MILLION PROCUREMENT CONDUCTED BY THE GOVERNMENT PRINTING OFFICE ON BEHALF OF THE U.S. ARMY. SERIOUS ALLEGATIONS OF POTENTIAL FRAUD AND CONFLICT OF INTEREST HAVE BEEN LEVELED AGAINST THE AWARD OF THIS CONTRACT BY THE LOSING VENDORS AND OTHERS.

INCREDIBLY, THE MERITS OF THIS PROTEST HAVE NOT BEEN REVIEWED AS REQUIRED BY LAW. O.I.R.A. HAS SUCCEEDED IN TEMPORARILY HALTING THE JUDICIAL PROCEEDINGS OF THE BOARD. AT OUR HEARINGS, CONGRESSMAN HORTON AND I INFORMED MRS. GRAMM THAT CONGRESS NEVER INTENDED FOR HER OFFICE TO HAVE THAT TYPE OF AUTHORITY. NONETHELESS, O.I.R.A. SUBSEQUENTLY ASSERTED TO THE COURTS THAT IT HAD THIS POWER.

THIS IS ONE MORE CASE WHERE O.I.R.A. HAS SHOWN A BLATANT DISREGARD FOR THE WISHES OF CONGRESS. IT IS MY FIRM CONVICTION THAT CONGRESS CANNOT STAND BY AND LET THIS OFFICE PERFORM AS IT HAS IN THE PAST. CONGRESS MUST MOVE FORCIBLY TO REMIND THIS OFFICE THAT IT MUST ACT WITHIN THE BOUNDS OF THE LAW.

I THEREFORE WOULD URGE THE SUBCOMMITTEE MEMBERS TO STRIKE THE $5.4 MILLION EARMARKED FOR THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS AND TO PROVIDE NO FUTURE FUNDING OF THIS OFFICE UNTIL IT HAS BEEN REAUTHORIZED BY CONGRESS. THANK YOU.

# # #

Mr. Roybal. Well, Mr. Brooks, this matter was discussed this morning with Mr. Miller.

Mr. Brooks. Yes, sir.

Mr. Roybal. We asked the questions that we felt had to be answered based on the letter that you sent this committee.

Mr. Brooks. Yes, sir.

Mr. Roybal. It was really based also on the testimony that you have given up to this point.

One of the things we discussed with him was the matter of authorization. He did acknowledge the fact that this was not authorized, but what was said was most of the things under the jurisdiction of your committee are not authorized. That, of course, is no excuse, but that was part of the answer.

Now, we know that Customs, for example, is not authorized.

Mr. Brooks. What, sir?

Mr. Roybal. Customs.

Mr. Brooks. Well, he can do away with that if he wants to. Does he want to do away with that?

Mr. Roybal. Well, we also tried to get him to justify a reduction of 1556 positions in Customs.

Mr. Brooks. He is trying to do away with it, I know.

Mr. Roybal. But none of these questions were actually answered. So what I am trying to get now is an answer to the present status of the authorization process. It has not been authorized in either the House or the Senate?

Mr. Brooks. That is correct.

Mr. Roybal. So there is absolutely no authorization.

Mr. Brooks. None pending.

Mr. Roybal. None that is pending.

Mr. Brooks. Nor have they requested any.

Mr. Roybal. No authorization has been requested. I also asked questions with regard to my feeling and that of other members of the House that they have spent the vast majority of their time on regulatory matters and that many felt that it was an invasion into something that was not really their concern. They disagree with that.

They tell me and they are going to present in writing further testimony that according to them will show this committee that, yes, number one, they do have that authority and that, number two, they have not been infringing upon anybody else's rights.

Can you provide this committee with legal authority? We have—I did quote back some of it to them. But can you tell the committee just exactly what has happened and how you come to the conclusion that they have, in fact, infringed upon the rights of other departments?

Mr. Brooks. Well, we had the Paperwork Reduction Amendments of 1983, and that report listed the summary and purpose of what the office was supposed to do, and it has all the background. We started early in 1983 on this and it was a bipartisan effort. We had a lot of hearings, and found the implementation is what is so bad. They just have not implemented.

When we assessed their performance, we found that they have made progress in reducing somewhat the paperwork burden, but they have virtually ignored all of the other aspects of information management that we recommended. I will just say they have not met most of the statutory deadlines—they met some of them—but they have not done too well on them. They have not met the other requirements. Their effort on other requirements has been woefully inadequate.

An analysis of their work shows the Paperwork Reduction Act had 13 tasks with statutory deadlines. OIRA has completed only four of those tasks. The deadlines that have been missed are the Federal Information Locator System to be operational by 4-1-82. It is not yet operational. OMB is continuing to resist carrying out the mandate.

The Computer Standards Development Program was to have been revitalized by 4-1-83. Instead, the budget of the Federal Computer Standards Program was cut from $10 million to $3 million.

Audit standards and requirements for information systems were to have been established by 4-1-82. The project was started in March 1982 but no document yet has been prepared.

You can see that most of the things they were supposed to do that were normal businesslike efficiency measures to manage the information the government has on a bipartisan basis were not done. We left it up to them to determine how to do these things. They are all doable. They are not imaginery goals, but they just do not want to apply any effort to it. I do not understand why not. You would think that they would want to do that.

Mr. **Roybal**. Sure.

Mr. **Brooks**. But under Miller's successor they just did not want to and now they appointed a new head of that agency, Mrs. Gramm, and she has not done a cotton-picking thing that is constructive about it. All they want to do is review the guidelines and work products of all the other government agencies and to some extent interfere with them and interfere with their implementation of congressional authorization and instruction.

So I think these people really should not be given a nickel until they can get right with the Lord and they have not come close yet. I have no—it does not make a bit of difference to my district particularly. This is of national interest and has to do with the national management of our information systems. They have just blatantly run over, passed over congressional authorization and acted like it is nothing and do what they please with the money. I think that is a mistake.

If they do not have authorization, that is grounds enough not to give them a nickel. When they come and get squared away, then maybe you will want to go into conference and consider it. But just see what they do first. They have not done anything yet. They have not requested authorization.

Mr. **Roybal**. All right, they have not requested authorization.

Mr. **Brooks**. Not a thing.

Mr. **Roybal**. That can be established.

Mr. **Brooks**. Yes, sir.

Mr. **Roybal**. Now, the various instances in which they have infringed upon the rights of other departments is something that we would like to have for our committee report when that is written.

Mr. **Brooks**. I will get that for you. I know who has good documentation on that. That would be John Dingell who has followed that very closely.

Mr. **Roybal**. All right.

Mr. **Brooks**. Yes.

Mr. **Roybal**. Whatever documentation is available we would like to have it for the committee report.

Mr. **Brooks**. Yes, sir.

Mr. **Roybal**. What do you recommend should be done after the committee report is adopted by the House? How can OMB and your office and that of Mr. Dingell work together to solve the problem so that we do not continue this year in and year out?

Mr. **Brooks**. In reply to your first question, I will submit to you the Paperwork Reduction Act Amendments of 1983 for your files, and also a copy of the amicus curiae brief filed by John Dingell, myself and Gus Hawkins and Bill Ford and Rodino that lists some of that agency's interference.

[CLERK'S NOTE.—The copy of the Paperwork Reduction Act Amendment of 1983 referred to above was retained in the Committee files.

[The information follows:]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Nos. 84-1252, 84-1392 & 85-1014

PUBLIC CITIZEN HEALTH RESEARCH GROUP, *et al.*,

Petitioners,

v.

ROBERT A. ROWLAND, Assistant Secretary of Labor,
Occupational Safety and Health Administration, *et al.*,

Respondents.

On Petitions for Review to the
Occupational Safety and Health Administration

MOTION OF REPRESENTATIVES JOHN D. DINGELL, PETER W. RODINO, JR., JACK BROOKS, AUGUSTUS F. HAWKINS, AND WILLIAM D. FORD, FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF PETITIONERS PUBLIC CITIZEN HEALTH RESEARCH GROUP, ET AL., AND FOR LEAVE TO FILE OUT OF TIME

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and Rule 10 of this Court, Representatives John D. Dingell, William D. Ford, Augustus F. Hawkins, Peter W. Rodino, Jr. and Jack Brooks, respectfully move this Court to permit them to file a brief as *amici curiae* in support of petitioners (in

Nos. 84-1252 and 85-1014) Public Citizen Health Research Group, *et al*. *Amici curiae* state the following in support of this Motion:

1. The *amici* are all chairmen of committees of the House of Representatives that have generated substantive legislation pursuant to which Executive Branch agencies have promulgated rules, and that have responsibility for oversight of such agencies and their rulemaking. Each of the *amici* has expressed concern regarding the effect of OMB interference in the rulemaking process pursuant to Executive Order 12,291 and its successor, Executive Order 12,498.

2. Representative Dingell chairs the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations, which have jurisdiction and oversight responsibility over all laws, programs and agencies relating to interstate and foreign commerce. The Committee's jurisdiction includes matters relating to energy, health, transportation, communications, consumer affairs and the environment. The Subcommittee on Oversight and Investigations has held numerous hearings examining the role of the Office of Management and Budget in the regulatory process and cases of OMB interference with regulations of the Environmental Protection Agency

and the Department of Health and Human Services. Additionally, Representative Dingell has successfully led efforts to defeat legislation which would codify much of Executive Order 12,291. See Role of OMB in Regulation: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 97th Cong., 1st Sess. (1981); EPA: Investigation of Superfund and Agency Abuses (Part 3), Hearings Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. (1983); Testimony of John Dingell Before the House Committee on Rules _____.

3. Representative Rodino chairs the House Committee on the Judiciary. As such, Representative Rodino is concerned about preserving the separation of powers embodied in the Constitution. The Judiciary Committee has jurisdiction over the Administrative Procedure Act and exercises oversight over whether administrative rulemaking conforms to the procedural protections of that act. Moreover, the Judiciary Committee also has jurisdiction over the standards of judicial review applicable to rulemaking decisions and oversight over whether those decisions are subject to effective judicial review. His committee's Administrative

Law and Governmental Relations Subcommittee held extensive hearings in both the 97th and 98th Congresses regarding regulatory reform and the effect of Executive Order 12,291. Information was gathered from over twenty independent agencies and agencies within the Executive Branch regarding the effect of OMB interference on agency rulemaking. See Regulatory Reform Act: Hearings Before the Subcomm. on Administrative Law and Governmental Relations of the Comm. on the Judiciary, 98th Cong., 1st Sess. (1983); Regulatory Procedures Act of 1981: Hearings Before the Subcomm. on Administrative Law and Governmental Relations of the Comm. on the Judiciary, 97th Cong., 1st Sess. (1981).

4. Representative Brooks heads the House Government Operations Committee. That committee has legislative jurisdiction over OMB and was the originating committee for the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, which established the Office of Information and Regulatory Affairs within OMB and assigned specific functions and activities to that office. The Government Operations Committee also has oversight jurisdiction over the operations of all Executive Branch agencies. Representative Brooks is also concerned about the impact of OMB interference on administrative rulemaking

procedures, judicial review of rulemaking, and the separation of powers. His committee's Manpower and Housing Subcommittee has held hearings that specifically addressed OMB's improper control over OSHA rulemaking. See Office of Management and Budget Control of OSHA Rulemaking: Hearings Before the Subcomm. on Manpower and Housing of the Comm. on Government Operations, 97th Cong., 2d Sess. (1982). His committee has issued a report criticizing OMB's interference in that process, noting "serious questions about the fairness and legitimacy of regulatory actions taken by OMB" and concluding that "[i]n practice, the Executive Order has been used as a back door, unpublicized, channel of access to the highest levels of political authority in the Administration for industry alone." See OMB Interference with OSHA Rulemaking: Thirtieth Report by the Comm. on Government Operations, 98th Cong., 1st Sess. 11 (1983).

5. Congressman Hawkins chairs the Education and Labor Committee. His committee oversees the activities of, inter alia, the Department of Education; Department of Labor, including OSHA; and the National Labor Relations Board. Congressman Hawkins has expressed his concerns about the effect of OMB intervention on

the rulemaking process in these agencies, including the OSHA rulemaking at issue in this case.

6. Congressman Ford heads the Committee on Post Office and Civil Service, which has responsibility for federal civil service personnel. He is concerned about the extent to which OMB interference has reduced the protections offered to federal employees by occupational safety and health regulations.

7. The *amici curiae* believe that they will contribute to the Court's consideration of this case by bringing to it an important perspective that, because it is not fully reflected in the briefs of the parties, is otherwise unlikely to receive full consideration. Specifically, the *amici curiae* reflect Congress' institutional concern about OMB actions that are inconsistent with the separation of powers set forth in the U.S. Constitution, and that contravene clear Congressional directives. *Amici*'s concern is that OMB's improper expansion of its authority violates the Constitution's basic allocation of powers between Congress and the Executive. The instant case is significant because it is part of a persistent pattern of such transgressions.

8. Amici curiae have only recently become aware of this case and the extent to which it presents issues directly relevant to their concerns. This belated awareness, as well as the press of legislative business and the need for extensive coordination among and between the five Congressmen involved, their committee staffs and pro bono outside counsel, precluded an earlier filing of the brief amici wish to file. Amici believe, however, that the filing of the instant Motion, along with the simultaneous and conditional filing of their brief as provided for in Fed. R. App. P. 29, will not prejudice any parties or delay the resolution of the merits of this action. Consistent with Rule 10(b) of this Court, the filing of this Motion will in no way interfere with the availability of this case for selection on the September/October calendar as previously ordered by this Court.

9. Petitioners Public Citizen Health Research Group, et al., have consented to this Motion. Respondents as well as petitioner (in No. 84-1392), the Association of Ethylene Oxide Users, have indicated their opposition to this Motion.

WHEREFORE, movants respectfully request that they be permitted to file, as amici curiae in this action, the brief conditionally filed herewith.

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STATEMENT OF THE ISSUE

Whether the Office of Management and Budget by causing the deletion of a short-term exposure limit from the standard established for ethylene oxide under the purported authority of Executive Order 12,291, unlawfully interfered in the rulemaking functions delegated by Congress to the Department of Labor and thereby contravened a legitimate exercise of Congress' legislative power under the United States Constitution.[1]

STATEMENT OF INTEREST

Representatives John D. Dingell, Peter W. Rodino, Jr., Jack Brooks, Augustus F. Hawkins, and William D. Ford submit this brief as amici curiae to urge this Court to prevent the Office of Management and Budget (OMB), under the purported authority of Executive Order 12,291, 3 C.F.R. § 127 (1982), from unlawfully interfering -- as it has in this case -- in the statutorily mandated process of rulemaking by administrative agencies.

The amici are Chairmen of committees of the United States House of Representatives which have generated much of the substantive legislation pursuant to which Executive Branch agencies have promulgated rules. They are also responsible for oversight of the rulemaking processes of those agencies. Each of the amici has expressed grave concern regarding the impact of OMB's pervasive interference in the rulemaking process pursuant to Executive Order 12,291, and its consequent impairment of Congress' proper role as the source of legislative authority under the Constitution. The amici believe that OMB's improper expansion of its authority violates the basic allocation of power under the Constitution, thereby transgressing the separation of powers. This case is significant because it is symptomatic of a persistent pattern of such transgression. It is important for the Court to reach the separation of powers issues raised here in order to deter OMB from its present, unchecked course of arrogating rulemaking power delegated by Congress to other agencies.

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[1] This action was before this Court previously on a motion by the Association of Ethylene Oxide Users for a stay, which was denied by this Court on January 23, 1985. A related case has also been before this Court. Public Citizen Health Research Group v. Auchter, 702 F.2d 1150 (D.C. Cir. 1983).

Each of the amici has criticized OMB's improper actions under Executive Order 12,291. Representative Dingell chairs the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations, which have jurisdiction and oversight responsibility over all laws, programs and agencies relating to interstate and foreign commerce. The Committee's jurisdiction includes matters relating to energy, health, transportation, communications, consumer affairs and the environment. The Subcommittee on Oversight and Investigations has held numerous hearings examining the role of the Office of Management and Budget in the regulatory process and cases of OMB interference with regulations of the Environmental Protection Agency and the Department of Health and Human Services. Additionally, Representative Dingell has successfully led efforts to defeat legislation which would codify much of Executive Order 12,291. See Role of OMB in Regulation: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 97th Cong., 1st Sess. (1981) EPA: Investigation of Superfund and Agency Abuses (Part 3), Hearings Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. (1983); Testimony of Hon. John Dingell Before the House Committee on Rules on H.R. 746, the Regulatory Procedure Act of 1982 (Sept. 30, 1982).

Representative Rodino chairs the House Committee on the Judiciary. As such, Representative Rodino is concerned about preserving the separation of powers embodied in the Constitution. The Judiciary Committee has jurisdiction over the Administrative Procedure Act and exercises oversight over whether administrative rulemaking conforms to the procedural protections of that act. Moreover, the Judiciary Committee also has jurisdiction over the standards of judicial review applicable to rulemaking decisions and oversight over whether those decisions are subject to effective judicial review. His Committee's Administrative Law and Governmental Relations Subcommittee held extensive hearings in both the 97th and 98th Congresses regarding regulatory reform and the effect of Executive Order 12,291. Information was gathered from over twenty executive branch and independent agencies regarding the effect of OMB interference on agency rulemaking. See Regulatory Reform Act: Hearings Before the Subcomm. on Administrative Law and Governmental Relations of the Comm. on the Judiciary, 98th Cong., 1st Sess. (1983); Regulatory Procedures Act of 1981: Hearings Before the Subcomm. on Administrative Law and Governmental Relations of the Comm. on the Judiciary, 97th Cong., 1st Sess. (1981).

Representative Brooks heads the House Government Operations Committee. His committee has legislative jurisdiction over OMB and was the originating committee for the Paperwork Reduction Act of 1980, Pub. L. No. 96-511. That Act established the Office of Information and Regulatory Affairs within OMB and assigned specific functions and activities to that office. The Government Operations Committee also has oversight jurisdiction over the operations of all Executive Branch agencies. Representative Brooks is concerned about the impact of OMB interference on administrative rulemaking procedures, judicial review of rulemaking, and the separation of powers. His committee's Manpower and Housing Subcommittee has held hearings which specifically addressed OMB's improper control over OSHA rulemaking. See Office of Management and Budget Control of OSHA Rulemaking: Hearings Before the Subcomm. on Manpower and Housing of the Comm. on Government Operations, 97th Cong., 2d Sess. (1982). His committee has issued a report criticizing OMB's interference in that process, noting "serious questions about the fairness and legitimacy of regulatory actions taken by OMB" and concluding that "[i]n practice, the Executive Order has been used as a back door, unpublicized, channel of access to the highest levels of political authority in the Administration for industry alone." See OMB Interference with OSHA Rulemaking: Thirtieth Report by the Comm. on Government Operations, 98th Cong., 1st Sess. 11 (1983).

Representative Hawkins chairs the House Education and Labor Committee. His committee oversees the activities of, inter alia, the Department of Education; the Department of Labor, including the Occupational

Safety and Health Administration (OSHA); and the National Labor Relations Board. Representative Hawkins has expressed his concerns about the effect of OMB intervention in the rulemaking process in these agencies, including the OSHA rulemaking at issue in this case.

Representative Ford heads the House Committee on Post Office and Civil Service which has responsibility for post office employees and federal civil service personnel. Representative Ford is concerned about the extent to which OMB interference has reduced the protections offered to federal employees by occupational safety and health regulations.

The amici Congressmen object to the systematic usurpation of legislative power by OMB pursuant to Executive Order 12,291. That Order was fashioned to make good on a promise to accomplish "regulatory relief." Whatever concern there may have been with the reach and growth of the federal government, there is no justification for the Executive Branch, in the guise of "relief," to use the Order in a way that so severely dislocates the allocations of powers in our government. Executive Order 12,291 is the cornerstone of a steadily growing Presidential apparatus the effect of which is to contravene explicit Congressional delegations of authority, to subvert meaningful public participation in and judicial review of federal regulations, and to impose substantive standards of decisionmakers foreign to the statutes they administer. Unless it is checked, the program embodied in Executive Order 12,291 will fundamentally damage the administrative process by which our laws are implemented, the legislative system by which our laws are enacted and monitored, and the separation of powers upon which our system of government rests.

The Constitution of the United States vests all legislative power in the Congress. In enacting legislation, Congress frequently delegates some of that legislative power -- in the form of rulemaking authority -- to specific administrative agencies. Congress delegates such authority in reliance upon the technical expertise and scientific knowledge possessed by these specified agencies, expertise which enables the agencies to promulgate more effective rules. To ensure that such rules are consistent with the policy choices made by Congress in the enabling legislation, Congress also provides substantive criteria to guide the agencies in their exercise of discretion. Moreover, Congress mandates specific rulemaking procedures to ensure that the rulemaking benefits from public input and that the agencies remain accountable to the public both through the political process and the courts. The essence of the "reasoned decisionmaking" that the courts require of agencies is that the regulatory decision emerge from the public rulemaking process and that the rulemaking record constitute the basis upon which the agency made the rulemaking decision. Open procedures and a reasoned decision are therefore essential to insure that departments exercise their delegated authority in a fashion that is faithful to the Congress' instructions.

This rulemaking process -- embodied in the provisions of the Administrative Procedure Act as well as in numerous specific statutes -- is the method through which Congress intends its substantive policies to be implemented.

Nothing in this constitutionally and statutorily prescribed scheme either mandates or recognizes a determinative role for OMB in the administrative rulemaking process. Nevertheless, since Executive Order 12,291 was issued, OMB has relentlessly pursued such a role. Utilizing that Order in conjunction with its formidable powers over money, personnel, information gathering, and official communications with Congress, OMB has insinuated itself into the institutional decisionmaking processes of all executive agencies so that, for all intents and purposes, its will is a determinative factor in agency rulemaking decisions.

Under Executive Order 12,291, both proposed and final rules of all executive agencies must be submitted to OMB's Office of Information and Regulatory Affairs (OIRA) before publication in the Federal Register. All regulations are reviewed by OMB to ensure that they comply with the principal substantive requirement of the Order: that such regulations satisfy cost/benefit criteria. OMB can prevent an agency from publishing a final rule until OIRA has submitted its comments and the agency has responded. Executive Order 12,291 imposes no time limits for the completion of OIRA's review, provides no safeguards against OMB acting as a conduit for private parties' arguments, and does nothing to prevent OMB from exerting undue influence through secret ex parte contacts of its own.

Taken alone, Executive Order 12,291 provides OMB with sweeping power to intrude into the regulatory decisionmaking process that Congress has directed particular agencies to conduct. The Executive Order, however, does not stand alone; it is buttressed by OMB's other powers. Most significantly, OMB has the power of the purse. All agencies must submit their proposed budget requests to OMB for its scrutiny, and OMB must approve all congressional testimony by executive agencies regarding any proposed appropriations or substantive authorization legislation.[2] OMB also has the power to establish agency employment ceilings,[3] to order agencies to withhold or amend communications with Congress regarding legislative and policy matters,[4] and to disapprove agency actions which impose either information-gathering or recordkeeping requirements.[5] In addition, under Executive Order 12,498, OMB is now empowered to review an agency's proposed regulatory agenda for the year and to block any regulatory action inconsistent with the Administration's regulatory principles.[6]

In sum, as the former Deputy Administrator of OIRA has noted: "The Government works using three things:

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[2] See OMB Circular A-19 (Revised): Legislative Coordination and Clearance.

[3] OMB Circular A-64 (Revised): Position Management Systems and Employment Ceilings.

[4] OMB Circular A-19 (Revised): Legislative Coordination and Clearance.

[5] See 44 U.S.C. § 3507 (1982).

[6] Executive Order 12,498, 50 Fed. Reg. 1036 (1985).

money, people, and regulations; the agency must get all three from OMB."[7]

Taken together, Executive Order 12,291 and OMB's other powers have allowed OMB to make itself into something Congress has consistently refused to authorize -- a "superagency." Since the 1940s Congress has consistently refused to create a centralized agency to oversee the regulatory process, because "such an office . . . will be political, will interfere with the independent operation of boards and commissions, [and] will constitute a superadministrative agency." Report on the Administrative Procedure Act (Comm. Print 1945), reprinted in Administrative Procedure Act: Legislative History, Senate Comm. on the Judiciary, 79th Cong., 1st Sess. (1946).

This and similar cases are not random incursions aimed at particularly sensitive areas of agency policymaking. They are part of a pervasive and persistent pattern of intrusion and interference that has shifted the locus of discretionary decisionmaking authority from the agencies designated by Congress to OMB.

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[7] See Olson, The Quiet Shift of Power: Office of Management & Budget Supervision of Environmental Protection Agency Rulemaking Under Executive Order 12,291, 4 Va. J. Nat. Resources L. 1,6 (1984) (quoting J. Tozzi, former OIRA Deputy Administrator).

Administrative agencies are no longer willing to challenge OMB authority in the regulatory arena. When asked to name an agency that has promulgated a regulation over OMB's objections, OIRA Administrator Douglas H. Ginsburg responded, "I don't think there is such an instance . . . No, none." Earley, What's a Life Worth?: Under the Reagan administration, it may be less than you thought, Wasington Post Magazine, June 9, 1985, p.p. 11, 37.

This arrogation of rulemaking power by OMB has several consequences which frustrate the will of Congress and the law. First, administrative decisions are being made not by the agency delegated authority by Congress to implement the statutory mission, but instead by an entity concerned essentially with a political mission to reduce regulatory obligations. Second, substantive criteria not intended by Congress are being injected by OMB into the rulemaking process. And, third, the administrative rulemaking record does not reflect the reasoning of the true decisionmaker. Accordingly, both meaningful public participation and effective judicial review -- the bedrock guarantees of the Administrative Procedure Act -- are thwarted.

The present case clearly illustrates these concerns. Simply put, in this case, OMB has utilized its purported authority under Executive Order 12,291 to force OSHA to drop a vital occupational health standard which was fully supported by the agency record. In so doing, OMB contravened Congress' mandate that OSHA rules be promulgated by the Secretary of Labor and not OMB; that these rules be promulgated pursuant to statutory procedures designed to ensure that rulemaking occurs in a public forum, subject to effective judicial review; and that these rules be designed to safeguard worker health and not to satisfy cost/benefit analysis.

This case, however, is far from an isolated example. OMB interference in agency rulemaking -- in contravention of the will of Congress -- has become pervasive. To cite just a few examples:

- OMB has forced EPA to withdraw proposed rules concerning the banning and phasedown of asbestos use, and instead directed EPA to refer action in that area to OSHA and the Consumer Product Safety Commission -- despite EPA's conclusion that its own action was required to reduce asbestos risks to a sufficient extent;[8]

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[8] See EPA's Asbestos Regulation, Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 99th Cong., 1st Sess. (1985); Early, What's A Life Worth? How the Reagan Administration Decides for You, Washington Post Magazine, June 9, 1985, pp. 11-12, 36-41.

- OMB has barred EPA from promulgating standards for hazardous wastes stored in covered underground storage tanks -- despite a statutory mandate to promulgate such regulation before March 1, 1985;[9]

- OMB has forced OSHA to delay and weaken its proposed hazard communication standard on the basis of cost/benefit criteria -- criteria which were precluded from agency consideration by statute;[10]

- OMB pressured EPA to subject health-based standards for allowable air pollutants under the Clean Air Act to cost/benefit considerations -- considerations that Congress had determined should not apply;[11]

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[9] See Complaint in Environmental Defense Fund v. Thomas and Stockman, Civil Action No. 85-1747, (D.D.C. filed May 30, 1985).

[10] Office of Management Budget Control of OSHA Rulemaking, Hearing Before a Subcomm. of the House Comm. on Government Operations, 97th Cong., 2d Sess. (1982); Workers's "Right to Know": OSHA's Hazard Communication Rule, Cong. Res. Serv. IB 84103 (March 1985).

[11] EPA: Investigation of Superfund and Agency Abuses (Part 3), Hearings of Subcomm. on Oversight and Investigations of the House Subcomm. on Energy and Commerce, 98th Cong., 1st Sess. 81 (1983).

- The application of OMB-imposed cost/benefit standards caused delay in the promulgation of FDA regulations to implement the Infant Formula Act of 1980 -- thereby allowing a substantial amount of defective infant formula to enter the market;[12]
- OMB forced EPA to eliminate a proposed rule dealing with degradation of water quality under the Clean Water Act on purely philosophical grounds -- although there was no apparent economic or scientific basis for OMB's objection.[13]

All of these cases, in amici's view, are examples of OMB's apparently insatiable appetite to consume rulemaking authority that Congress has specifically granted to expert agencies, and to apply to rulemaking proceedings criteria that Congress did not intend to apply or that Congress has, as here, specifically excluded. Moreover, because OMB's efforts in these rulemaking activities are wholly clandestine and "off the record," its control over the outcome of rulemakings and the information on which it based its directions to agencies are not on the record for parties and courts to review. The result is a process that violates not only congressional intent, but also fundamental fairness.

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[12] Infant Formula: The Present Danger, Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy & Commerce, 97th Cong., 2d Sess. (1982).

[13] EPA: Investigation of Superfund and Agency Abuses (Part 3), Hearing of the Subcomm. on Oversight and Investigations of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. (1983), at 5-8, 79-83; Investigation of the EPA: Report on the President's Claim of Executive Privilege Over EPA Documents, Absues in the Superfund Program, and Other Matters by the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 98th Cong., 2d Sess. 282-94 (1984).

Once an agency promulgates a regulation, Congress cannot overrule that action without passing new legislation, subject to veto by the President. Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983). Hence, Congress must at the outset exercise its recognized constitutional authority to provide procedural and substantive criteria to guide the agency's rulemaking toward the result Congress intends. Once Congress has exercised its constitutional authority in that manner, as it has plainly done in this case, the responsibility falls to the Judiciary to ensure that agency rulemaking conforms to the congressional mandate. Congressmen Dingell, Rodino, Brooks, Hawkins, and Ford respectfully urge this Court to prevent the improper usurpation by OMB of legislative power, vested by the Constitution in Congress and delegated by Congress to a specific executive branch official, the Secretary of Labor.

STATEMENT OF THE ISSUE

Whether the Office of Management and Budget, by causing the deletion of a short-term exposure limit from the standard established for ehtylene oxide under the purported authority of Executive Order 12291, unlawfully interfered in the rulemaking functions delegated by Congress to the Department of Labor and thereby contravened a legitimate exercise of Congress' legislative power unt eh United States Constitution.[14]

STATEMENT OF THE CASE

The essential facts of this litigation are set forth in detail in the Petitioners'[15] Statement of the

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[14] This action was before this Court previously on a motion by the Association of Ethylene Oxide Users for a stay, which was denied by this Court on January 23, 1985. A related case has also been before this Court. Public Citizen Health Research Group v. Auchter, 702 F.2d 1150 (D.C. Cir. 1983).

[15] The Association of Ethylene Oxide Users is the Petitioner in No. 84-1392, an action which has been consolidated with the petitions of Public Citizen Health Research Group, *et al*. Because the Association's petition and brief do not concern OMB's involvement in the OSHA EtO rulemaking, they are not discussed by *amici* in this brief. All references to "Petitioners" herein refer to Petitioners in Nos. 84-1252 and 85-1014, Public Citizen Health Research Group, *et al*.

Case. Brief for Petitioners at 5-28. In order to avoid duplication, amici incorporate Petitioners' Statement and reiterate only those facts that bear directly on their interests as discussed above.

First, the version of the ethylene oxide ("EtO") standard that was transmitted to OMB by Labor Secretary Donovan and Acting Assistant Secretary Tyson on June 14, 1984, reflected the Secretary's determination that, consistent with his responsibilities under the Occupational Safety and Health Act of 1970 ("OSH Act"), inclusion of a short-term exposure limit ("STEL") for EtO was essential to meet his statutory obligations -- the promulgation of "the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity," 29 U.S.C. § 655(b)(5) (1982). This determination was made on the basis of a full record, after months of informal notice and comment rulemaking. Based on that record, the Secretary concluded that a STEL was required for several reasons:

(a) a 1 ppm permissible exposure limit (PEL) would not be sufficient, by itself, to reduce the risk of cancer caused by EtO to acceptable limits; in contrast, a 10 ppm, 15-minute STEL, would "significantly augment the employee protection provided by the [PEL]," Final Standard (Draft Submitted to OMB) (June 14, 1984) 218, Jt. App. 12, 229

(b) a STEL would protect against the risk of serious chromosome damage posed by EtO, _id_. at 217, Jt. App. at 228; and

(c) a STEL was necessary to reduce the risk of spontaneous abortions and other reproductive damage. _Id_. at 222, Jt. App. at 233.

Moreover, on June 14, OSHA concluded that a STEL would be technologically and economically feasible and that the imposition of a STEL would involve minimal costs to industry. _Id_. at 172-73, Jt. App. at 183-84.

Second, the rulemaking at issue occurred in the context of a related case, the procedural history of which clearly establishes that the version of the standard sent to OMB on June 14 -- including the STEL -- would have become the final rule but for OMB's objections. Specifically, after this Court ordered the Occupational Safety and Health Administration ("OSHA") to expedite its EtO rulemaking, Public Citizen Health Research Group v. Auchter, 702 F.2d 1150 (D.C. Cir. 1983), the parties entered into a stipulation requiring OSHA either to complete the rulemaking process by June 15, 1984 or to provide prompt notification that a delay was possible. OSHA provided no such notification, thereby indicating that it intended to meet the June 15 deadline by adopting the rule it sent to OMB on June 14.

Third, it is clear that OMB caused the deletion of the STEL from the rule proposed by OSHA. The document submitted to the Federal Register on June 15 is identical to that submitted by OSHA to OMB the day before, except that deletions prompted by OMB's objections were simply blacked out. Indeed, the agency concedes that the deletion of the STEL on June 15 was "largely in response to the reservations expressed" by OMB. 49 Fed. Reg. 25,734, 25,775 (June 22, 1984).

Fourth, it is undisputed that the basis for OMB's objections to OSHA's STEL was OMB's conclusion that "the rule is inconsistent with the policies of Executive Order 12291." Letter from Christopher DeMuth (OMB) to Francis X. Lilly (Solicitor, Department of Labor) (June 14, 1984), Jt. app. 415, 415. In particular, in OMB's opinion, "OSHA's final ethylene oxide rule violate[d] in major respects the principles set forth in Section 2 of Executive Order 12291." Id., Jt. App. at 416. Section 2 mandates the application of cost/benefit criteria to agency rulemaking.

Fifth, OSHA's rulemaking record, although intended by Congress to define the scope of this Court's review of the rule at issue, see 29 U.S.C § 655(f), is insufficient with regard to OMB's review. The facts considered by OMB, the bases for its judgments about the EtO) standard, and the procedures OMB followed are not identified in the record, even though the deletion of the STEL resulted from OMB's reservations, and despite OMB's assertion that it had been reviewing the matter for "several weeks." Letter from DeMuth to Lilly, Jt. App. at 415. What we know about the grounds for OMB's ultimately dispositive opposition to the STEL is known primarily because its comments so thoroughly parroted the arguments that industry sources opposed to the rule had previously made -- without success -- to OSHA.

Sixth, the additional rulemaking proceeding OSHA undertook regarding an EtO STEL subsequent to the June 15, 1984 rulemaking cannot obscure the fact that the dispositive decision to delete the STEL was made on June 15. During the second round of rulemaking, both the National Institute for Occupational Safety and Health and the National Institute for Environmental Health Sciences submitted comments supporting a STEL; and, as OSHA's own expert EtO team stated, "no new significant information [was] provided by parties opposing adoption of a STEL for EtO." Memorandum from Marvin Fell, et al., to R. Leonard Vance re: "STEL for Ethylene Oxide" (Nov. 20, 1984) with Attachment, Jt. App. 523, 529. They therefore concluded:

> "In the June 14, 1984 draft final standard, prior to receiving comments from OMB, OSHA concluded that a STEL was necessary based on evaluation of evidence in the record . . . . If the decision is made to go along with OMB's reservations and not to promulgate a STEL, the Agency's June 1984 evaluation will need to be changed without having any new substantive information to support such a change in position." Id. at 530, 534.

SUMMARY OF ARGUMENT

This case represents a clear example of the contravention of Congress' law-making power by OMB. Under the purported authority of Executive Order 12,291, OMB caused the Secretary of Labor to delete a STEL from the EtO standard he had determined to adopt following rulemaking conducted under the OSH Act. In so doing, OMB contravened Congressional directives (1) that OSHA rules be promulgated by the Secretary of Labor and not OMB; (2) that those rules be promulgated pursuant to statutory procedures designed to ensure that rulemaking occurs in a public forum, subject to meaningful public participation and effective judicial review; and (3) that those rules be designed to safeguard worker health and not to satisfy cost/benefit analysis. Such a flagrant usurpation of Congressional prerogatives can be neither constitutionally justified, nor judicially tolerated.

In 1970, Congress enacted the OSH Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions . . . ." 29 U.S.C. § 651(b) (1982). To effectuate that purpose, it "authoriz[ed] the Secretary of Labor to set mandatory occupational safety and health standards . . . ." _Id._ at § 651(b)(3). The decision to delegate authority specifically to the Secretary of Labor was consciously made in light of his expertise and that of his department in the area of occupational safety and health. Indeed, it was that expertise that convinced Congress to make the delegation that it might not otherwise have made.

The arrogation of that authority by political appointees at OMB, individuals wholly without expertise in the relevant subject matter, makes a mockery of Congress' clearly expressed intent.

In addition to specifying the Secretary of Labor as the decisionmaker, Congress in the OSH Act also mandated specific rulemaking procedures under which OSHA standards were to be promulgated. Those procedures were intended to provide for effective public participation and enhanced judicial review of standards promulgated under the Act. Those procedures do not apply to OMB; indeed, that office actively resists the creation of any kind of public record of its determinations. By shifting the locus of decisionmaking from the agency that kept the record to which the public could respond and which the courts can review, to an agency which did not, OMB has effectively undermined Congress' intentions regarding the nature of the rulemaking process. What this Court has long feared -- "the danger of 'one administrative record for the public and this court and another for the Commission'" -- has here occurred. See Sierra Club v. Costle, 657 F. 2d 298, 401 (D.C. Cir. 1981) (quoting Home Box Office v. FCC, 567 F.2d 9, 54 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977)).

Finally, OMB's interference in this matter also caused substantive decisionmaking criteria, criteria that Congress expressly did not want applied under the OSH Act, to govern the outcome of the EtO rulemaking. By requiring OSHA to apply statutorily impermissible cost/benefit criteria, rather than the health and safety criteria embodied in the Act, OMB effectively subverted the will of Congress. See American Textile Manufacturers Institute, Inc. v. Donovan, 452 U.S. 490 (1981). That result further confirms the wisdom of, and the need to honor, Congress' decision to repose rulemaking discretion in the health and safety experts of Labor and OSHA -- and not in OMB.

There can be no constitutional justification for OMB's actions in this case. It is, of course, true that the President may inquire as to the opinions of administrative officers, may supervise and guide those officers, and may remove them from office. The President's authority over subordinate executive officials is not absolute, however, and there is no authority to suggest that he -- let alone an agency such as OMB -- may go further and actually dictate the outcome of a rulemaking process to the agency charged by Congress with administrative discretion. That is precisely what occurred here. Accordingly, the congressional amici respectfully urge this Court to vacate the EtO standard adopted after OMB's intervention, and to reinstate the standard which the Secretary of Labor properly proposed pursuant to the provisions of the OSH Act.

ARGUMENT

I. OMB'S INTERFERENCE IN OSHA'S ETO RULEMAKING PURSUANT TO EXECUTIVE ORDER 12,291 CONTRAVENED CONGRESSIONAL INTENT AS EXPRESSED IN THE OCCUPATIONAL SAFETY AND HEALTH ACT

Congress in 1970 enacted the Occupational Safety and Health Act to "assure so far as possible [to] every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. § 651(b) (1982). To effectuate that goal, Congress delegated authority to the Secretary of Labor to promulgate occupational safety and health standards. Id. § 655(b). When regulating toxic substances such as EtO, the Secretary was instructed to "set the standard which most adequately assures, to the extent feasible . . . that no employee will suffer material impairment of health or functional capacity." Id. at § 655(b)(5) (1975). The OSH Act set forth procedures for promulgating such standards and provided for judicial review. Id. at § 655(b) and (f).

On February 17, 1981, President Reagan issued Executive Order 12,291. 3 C.F.R. § 127 (1982). The executive order requires all executive branch agencies to send all proposed and final regulations to OMB for pre-publication review. Executive Order 12,291, § 3(c). OMB is directed to review each regulatory action to ensure that the benefits of the regulation exceed its costs and that the regulation maximizes "aggregate net benefits to society." Id. at § 2. An agency may not issue a rule until it responds to OMB's comments. Id. at § 3(f)(2). Thus, under the Executive Order, OMB exercises a de facto veto power over all agency rulemaking.

In accordance with the substantive and procedural requirements of the OSH Act, OSHA and the Secretary of Labor conducted a rulemaking proceeding and promulgated a toxic substances standard to govern worker exposure to EtO. Pursuant to Executive Order 12,291, OMB reviewed the EtO standard and intervened in the rulemaking process. The result was OMB's veto of the STEL. This action was unlawful in three distinct ways. First, the shift of rulemaking authority to OMB contravened Congress' delegation of such authority to the Secretary of Labor. Second, OMB's interference in the EtO rulemaking contravened Congressional intent that OSHA rulemaking be subject to meaningful public participation and judicial review. Finally, OMB's application of cost/benefit analysis was inconsistent with the substantive criteria mandated by Congress in the OSH Act.

A. The Shift of Rulemaking Authority to OMB Contravened Congress' Express Delegation of Authority to the Secretary of Labor

OMB's interference in the EtO rulemaking violated Congress' clearly expressed mandate that health and safety standards be promulgated by the Secretary of Labor, the Executive Branch official with the resources and expertise essential to making the proper judgment as to how best to fulfill Congress' objectives in this area. See 29 U.S.C. § 655 (1975). In this case, the decision to delete the STEL was made not by the Secretary, but by OMB.

That Congress vested rulemaking power in this area only in the Secretary of Labor -- and not OMB -- is beyond peradventure. The Congressional declaration of purpose and policy in the OSH Act states:

> "The Congress declares it to be its purpose and policy . . . to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources . . . by authorizing

> the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce. . . ."

29 U.S.C. § 651(b)(2) (emphasis added); see also Industrial Union Department v. Hodgson, 499 F.2d 467, 470, 474 (D.C. Cir. 1974).

Congress delegated this authority to the Secretary because of his expertise and the expertise of the Department in the area of occupational safety and health. Indeed, one key issue in the debate preceding passage of the OSH Act was whether rulemaking authority should be delegated to the Secretary of Labor or, as the Administration-backed substitute proposed, to an independent board. Those who successfully argued that the Secretary should promulgate standards relied upon the following factors: greater likelihood that the standards would thereby "be the result of a studied scientific approach which should characterize rulemaking of this type," 116 Cong. Rec. 37,339, (1970) (statement of Sen. Williams); the Secretary's "traditional [ ]. . . responsibility to set and enforce labor standards," id. at 37,626 (statement of Sen. Muskie); and the Secretary's "primary obligation . . . to protect the legitimate interests of workers and to enforce public policy in these areas," id. at 38,374 (statement of Rep. Cohelan). Moreover, Congress provided the Secretary with the means to augment his Department's existing expertise both by establishing a National Advisory Committee on Occupational Safety and Health to advise the Secretary and by granting the Secretary the authority to appoint advisory committees to make recommendations to him regarding particular occupational safety or health standards. 29 U.S.C. § 656.

Congress did not delegate any administrative rulemaking authority in the area of occupational safety and health to OMB. OMB is not even mentioned in the OSH Act, and OMB lacks any administrative expertise in the area of occupational safety and health.

OMB's exclusion from the process is consistent with the long history of Congress' repeated refusal to enact regulatory reform legislation that would ratify broad OMB or presidential oversight of agency rulemaking. Thus, in 1941 the Report of the Attorney General's Committee on Administrative Procedure urged the creation of a "superagency" to coordinate and make periodic recommendations regarding administrative procedures. The Committee's report envisioned that the superagency would be empowered to require additional procedures and oversee the entire agency decisionmaking process. The proposal was rejected because of legislative concern that the decisions of such a superagency would be political. Later attempts to achieve a broad, centralized substantive role for OMB have encountered the same concern, and have fared no better in Congress. See Rosenberg, Beyond the Limits of Executive Power: Presidential Control of Agency Rulemaking Under Executive Order 12,291, 80 Mich. L. Rev. 193, 221-25 (1981).

Most recently, Congress has refused to ratify Executive Order 12,291 through legislation. In the 97th Congress, the House Rules Committee, at the behest of several of the amici, declined to permit legislation codifying Executive Order 12,291 to come to a vote of the full House. See, Testimony of Hon. John Dingell Before the House Committee on Rules on H.R. 746, the Regulatory Procedure Act of 1982 (Sept. 30, 1982); Testimony of Hon. Jack Brooks Before the House Committee on Rules on H.R. 746 (Dec. 9, 1982). In the 98th Congress, legislation to ratify the executive order was not even reported out of the Judiciary Committee's Subcommittee on Administrative Law. See, H.R. 2327, 98th Cong., 1st Sess. (1983). See generally Olson, The Quiet Shift of Power: Office of Management & Budget

Supervision of Environmental Protection Agency Rulemaking Under Executive Order 12,291, 4 Va. J. Nat. Resources L. 1, 24 (1984).

Executive Order 12,291 on its face purports to recognize this Congressional limitation on its delegation of rulemaking authority to particular agencies. Section 3(f)(3) of the Executive Order expressly provides that it should not "be construed as displacing the agencies' responsibilities delegated by law." Indeed, in 1981 the Justice Department conceded that "[a] wholesale displacement might be held inconsistent with the statute vesting authority in the relevant official." Department of Justice, Office of Legal Counsel, Memorandum of February 13, 1981, reprinted in, Role of OMB in Regulation: Hearing before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 97th Cong., 1st Sess., 486, 489 (1981).

Respondents here argue that the Secretary of Labor did exercise his discretion in the decision to delete the STEL from the EtO standard. Brief for Respondents, pp. 87-94. But, in fact, it was OMB, and not the Secretary of Labor, that exercised administrative rulemaking authority and ordered the deletion of the STEL from the EtO standard. The facts permit no other conclusion.

On June 14, 1984, after a prolonged rulemaking process and just 24 hours before a judicially mandated deadline, the Secretary of Labor submitted to OMB an EtO standard which incorporated a STEL. The EtO standard was accompanied by a lengthy statement of the Secretary's reasons for his decision. No new evidence questioning the necessity of a STEL was introduced into the administrative record in the ensuing 24 hours. Nevertheless, the next day -- after OMB submitted its "comments" on the proposed standard -- the STEL and the reasons supporting its adoption were deleted from the EtO standard as published in the Federal Register. No effort was made to explain that the deletion of the STEL was based upon any reasoned reconsideration by the Secretary of Labor of the administrative record as it stood on June 14; instead, all references to the STEL and the justifications therefor were simply blacked out of the June 14 document. Without doubt, OMB had exercised a naked, *de facto* veto over the EtO standard.[16]

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[16] The facts in this case are remarkably similar to those in *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954). In that case, the Attorney General "made quite clear" to the Board of Immigration Appeals that he wanted the plaintiff deported as an "unsavory character [ ]." *Id*. at 267. The Supreme Court concluded that the Attorney General's actions were sufficient to charge him with dictating the decision to the Board, so that the Board failed to exercise its own discretion regarding the plaintiff's appeal. *Id*. at 267-68. The Supreme Court's decision was unaffected by the fact

[Footnote continued on following page]

See Olson, 4 Va. J. Nat. Resources L. at 43.

"If the word 'discretion' means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience." United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 266-67 (1954). In this case, Congress' express delegation of rulemaking discretion to the Secretary of Labor has been contravened by OMB. This unauthorized exercise of rulemaking power must be overturned by this Court and the Secretary of Labor's June 14, 1984 decision to adopt a STEL must be reinstated.

B. OMB Interference in the EtO Rulemaking Contravened Congressional Intent that OSHA Rulemaking Be Subject to Public Participation and Judicial Review

Congress, in the OSH Act, did not simply delegate authority to the Secretary of Labor to promulgate occupational safety and health standards; Congress also mandated specific rulemaking procedures that provide

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[Footnote 16 continued from preceding page] that the Attorney General, like OMB in this case, did not explicitly order the Board to rule in a particular way. As the Supreme Court noted: "It would be naive to expect such a heavy-handed way of doing things." Id. at 267.

for effective public participation and enhanced judicial review of standards promulgated under the Act. OMB, by relying on its asserted authority under Executive Order 12,291, interfered in the EtO rulemaking. That interference effectively barred both meaningful public participation and the opportunity for effective judicial review, because the basis for the rulemaking decision -- made by OMB -- was withheld from the administrative record.

1. Congress Intended To Provide for Meaningful Public Participation in OSHA Rulemaking

Both the Administrative Procedure Act and the OSH Act provide for meaningful public participation in informal agency rulemaking through the requirement of notice and comment procedures. Such procedures give "interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments." 5 U.S.C. § 553(c) (1982). The "hybrid rulemaking procedures" of the OSH Act, see United Steelworkers of America v. Marshall, 647 F.2d 1189, 1206 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981), augment this opportunity for public participation in OSHA rulemaking. In addition to traditional notice and comment procedures, Congress granted interested persons the right to a public hearing on their objections to a proposed rule. 29 U.S.C. § 655(b)(3).

On numerous occasions, this Court has stressed the "importance of citizen participation in a variety of administrative settings." Office of Communications of the United Church of Christ v. FCC, 707 F.2d 1413, 1441 n.91 (D.C. Cir. 1983). See Office of Communications of the United Church of Christ v. FCC, 465 F.2d 519, 527 (D.C. Cir. 1972) ("In recent years, the concept that public participation in decisions which involve the public interest is not only valuable but indispensable has gained increasing support."); Medical Committee for Human Rights v. SEC, 432 F.2d 659, 667 (D.C. Cir. 1970).[17] For such participation to be meaningful, however, the public must be fully informed of the facts upon which the agency bases its decision. As this Court stated in Action For Children's Television v. FCC, 564 F.2d 458, 471 (D.C. Cir. 1977):

> "The information gathered by the Commission during this informal rulemaking process, along with any information put forth by the agency itself, represent the factual basis on which the agency must necessarily proceed in making its final determination. This factual predicate must be limited

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[17] See also Gellhorn, Public Participation in Administrative Proceedings, 81 Yale L. J. 359 (1972); Stewart, The Reformation of American Administrative Law, 88 Harv. L. Rev. 1667, 1760 (1975).

> in this way in order to give interested parties proper notice of the reasoning behind the agency's actions and to give meaning to the right to submit comments on the proposed rule."

OMB's preemptive actions here derive these essential procedural rights to the public, contrary to Congress' direction.

2. Congress Intended To Provide for Effective Judicial Review of OSHA Rulemaking

In addition to providing the means for meaningful public participation in agency rulemaking, both the APA and the OSH Act subject agency action to effective judicial review. Under the APA, informal agency rulemaking determinations are upheld on review unless they are "arbitrary and capricious." 5 U.S.C. § 706(2)(A). Under this standard, judicial review must be both "searching and careful." Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971). In the OSH Act Congress underscored its concern for meaningful judicial review by requiring that the Secretary's determinations be "supported by substantial evidence in the record considered as a whole." 29 U.S.C. § 655(f).

In order for a court to review effectively the Secretary's decisions under either standard, the court must be fully informed of the bases for those decisions. *Action for Children's Television* v. *Federal Communications Commission*, 564 F.2d at 471. This requires, in addition to the agency's statement of reasons for its action, the existence of an accurate agency rulemaking record that contains all of the factual evidence upon which the agency based its decision. *See* *Industrial Union Department* v. *Hodgson*, 499 F.2d 467, 475-76 (D.C. Cir. 1974). *See* *also* *Home Box Office* v. *FCC*, 567 F.2d 9, 54 (D.C. Cir.) *cert*. *denied*, 434 U.S. 829 (1977) ("As a practical matter, *Overton Park's* mandate means that the public record must reflect what representations were made to an agency so that relevant information supporting or refuting those representations may be brought to the attention of the reviewing courts by persons participating in agency proceedings."); Olson, 4 Va. J. Nat. Resources L. at 32 ("Effective judicial review . . . requires an accurate record of the arguments and facts before the agency decision maker."). Indeed, OSHA's own regulations recognize the need for a complete administrative record. 29 C.F.R. § 1911.15(a)(2) (1984) (discussing "congressional expectation that the rulemaking would be on the basis of a record to which a substantial evidence test, where pertinent, may be applied").

Effective judicial review also requires that the public have the opportunity for meaningful comment during the rulemaking process. This Court's prior decisions recognize that "[s]uch comment serves not only to clarify the issues and positions being considered at the agency level, but also to ensure that factual questions underlying the agency's decision are not raised, by necessity, for the first time on judicial review." Environmental Defense Fund v. Blum, 458 F. Supp. 650, 659 (D.D.C. 1978) (quoting United States Lines, Inc. v. Federal Maritime Commission, 584 F.2d 519, 542 (D.C. Cir. 1978)); see also Home Box Office v. FCC, supra, 567 F.2d at 55.

3. OMB's Displacement of OSHA's Decisionmaking Authority Prevented Meaningful Public Participation and Effective Judicial Review

In this case, OMB's arrogation of rulemaking power to itself effectively subverted Congress' intent. Unlike OSHA, OMB's decisionmaking process is governed by neither the hybrid rulemaking requirements of the OSH Act, nor the informal rulemaking requirements of the APA. There is no record of the communications and comments OMB received from industry,[18] and there was no opportunity for petitioners here to respond to those communications. Neither was there any docketing of the ex parte contacts from OMB to OSHA and from OSHA to OMB.[19] The net result was, as this Court has repeatedly warned in the past, to "create the danger of 'one administrative record for the public and this court and another for the Commission.'" Sierra Club v. Costle, 657 F.2d 298, 401 (D.C. Cir. 1981) (quoting Home Box Office v. FCC, 567 F.2d at 54).

In this case, the record for the public and the court was that of OSHA, while the record on which the decision was actually made was the secret record of

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[18] OMB often actively solicits comments from industry on specific rules and OMB personnel meet frequently with industry representatives. OMB then serves as a secret conduit to administrative agencies for industry views. Olson, 4 Va. J. Nat. Resources L. at 55-57. In the present case, for example, we are aware that such industry contacts took place only because OMB's "comments" on the EtO STEL so closely parroted those of industry groups opposed to the standard. See Brief for Petitioners, p. 55; Brief for Respondents, p. 83, n.68.

[19] This is no accident: most criticisms by OMB of agency rules are delivered orally so as not to "leave fingerprints" in the administrative record, Washington Post, July 10, 1981, at A21, Col. 2 (quoting Jim Tozzi, OMB, OIRA Deputy Administrator). OMB "vehemently oppose[s] any effort to require it (or an agency) to log, summarize or docket the Office's oral contacts with the agency or outside parties." Olson, 4 Va. J. Nat. Resources L. at 59.

OMB. This Court should not lend its authority to this rulemaking "process," by reviewing OSHA's administrative record as if it were the real basis for the rulemaking in this case. Attempts by respondents to justify the deletion of the STEL on the basis of the public record are a form of post hoc rationalization, not entitled to credence by this Court. Cf. American Textile Manufacturers Institute v. Donovan, 452 U.S. 490, 539 (1981) (in reversing OSHA regulation based on inappropriate criteria, Supreme Court noted that "the post hoc rationalizations of the agency or the parties to this litigation cannot serve as a sufficient predicate for agency action").

In Environmental Defense Fund v. Blum, 458 F. Supp. at 661, Judge Gesell wrote that an "agency may not . . . skew the 'record' for review in its favor by excluding from that 'record' information in its own files which has great pertinence to the proceeding in question." OMB and OSHA have done exactly that here, by hiding the real record from the public and from this Court. OMB's displacement of OSHA's decisionmaking authority, therefore, not only violated Congress' intent that the decision be made by the agency with appropriate expertise, but also violated Congress' determination that the decision be made by an agency operating under procedures which afford the opportunity for meaningful public participation and effective judicial review.

C. OMB's Application of Cost/Benefit Analysis Contravened Substantive Criteria Expressly Mandated by Congress in the OSH Act

Finally, OMB's interference in this matter forced substantive decisionmaking criteria -- standards that Congress did not want applied under the OSH Act -- to govern the outcome of this rulemaking. By requiring OSHA to apply statutorily impermissible cost/benefit criteria, rather than the health and safety criteria embodied in the Act, OMB effectively subverted the will of Congress. Indeed, the result further confirms the need to honor Congress' decision to repose rulemaking discretion with the health and safety experts of OSHA, and not with the economists of OMB.

The Secretary of Labor and OSHA promulgated the EtO's standard at issue in this case pursuant to Section 6(b)(5) of the OSH Act. That section provides in relevant part:

> "The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available

> evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life." 29 U.S.C. § 655(b)(5).

The Supreme Court's interpretation of this provision makes clear that, once OSHA has determined that a particular toxic substance poses a "significant risk" to worker health, the agency must promulgate a standard restricting exposure to that toxic substance that will minimize that risk to the greatest extent possible. American Textile Manufacturers Institute, Inc. v. Donovan, 452 U.S. 490 (1981) ("ATMI"). As the Court held in ATMI, OSHA may not balance the benefits of such a standard against the costs of its implementation, because Congress placed "the 'benefit' of worker health above all other considerations save those making attainment of this 'benefit' unachievable." Id. at 509. Cf. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 411-13 (1971) (where statute prohibited construction of highways through public parks if "feasible and prudent" alternatives existed, Secretary of Transportation was prohibited from balancing the benefit of parkland preservation against its costs; statute made protection of parkland of paramount importance).

Despite this clear statement by both Congress and the Supreme Court regarding the meaning of Section 6(b)(5), OSHA deleted the portion of its proposed EtO standard requiring a STEL on the basis of cost/benefit criteria.[28] This decision was prompted by a letter

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[28] The government in its brief contends that the decision not to implement the STEL was based not on cost/benefit criteria, but on concerns raised regarding the STEL's cost-effectiveness and regarding the risk to worker's health if only a PEL were implemented. Brief for Respondents at 75, n.58. OSHA's ultimate statement of reasons for not promulgating a STEL as part of the EtO standard was carefully crafted so as to avoid reliance on cost/benefit criteria. 50 Fed. Reg. 64 (1985). However, the assertion that cost-effectiveness and risk assessment criteria were decisive is not credible.

OSHA's June 14, 1984 version of the EtO standard, which included the STEL provision, made clear that a significant risk to worker health would still exist if only the one ppm PEL were implemented. June 14 Document at 217; App. 228. OSHA concluded that inclusion of a STEL would "significantly augment the employee protection provided by the [PEL]." Id. at 218, App. 229. Nor can OSHA's decision to delete the STEL be justified on cost-effectiveness grounds. Such a justification would require replacing the STEL with a less costly, but equally effective measure. In contrast, OSHA simply deleted the STEL from the proposed standard; no compensating factor was added. Therefore, the decision to delete the STEL can only be explained on cost/benefit grounds. This justification for not imposing a STEL was foreclosed to OSHA by the Supreme Court's decision in ATMI.

In other circumstances, OMB has insisted, in clear violation of Executive Order 12,291, that agencies employ cost/benefit analysis where application of such criteria was precluded by statute. For example, former EPA Chief of Staff John Daniel testified that even though by statute certain EPA rules had to be based exclusively on health considerations, OMB kept "trying to shape the standard and kept urging upon us consideration of the costs through certain types of analyses that really were not permitted . . . under the statute." EPA: Investigation

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to OSHA from OMB, part of OMB's review of agency rulemaking under Executive Order 12,291. Again, OSHA's preamble to the rule issued on June 15 acknowledges that the decision to delete the STEL was based largely on reservations expressed by OMB. 49 Fed. Reg. 25,734, 25,775 (1984). The gravamen of the objections expressed in that letter was OMB's conclusion "that the rule is inconsistent with the policies of Executive Order 12,291" which imposes -- supposedly only to the extent permitted by law -- cost/benefit analysis on all agency rulemaking. Letter from DeMuth to Lilly, supra, Jt. App. 415.

An agency engaged in rulemaking "must give effect to the unambiguously expressed intent of Congress." Chevron v. Natural Resources Defense Council, 104 S. Ct. 2778, 2781-82 (1984). "When Congress directs an agency to consider only certain factors in reaching an administrative decision, the agency is not free to trespass beyond the bounds of statutory authority by taking other factors into account." Lead Industries Ass'n. v. EPA, 647 F.2d 1130, 1150 (D.C. Cir.), cert.

[Footnote 20 continued from preceding page] of Superfund and Agency Abuses (Part 3): Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce, 98th Cong., 1st Sess. 81 (1983) (Testimony of John Daniel).

denied, 449 U.S. 1042 (1980). "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider. . . ." Motor Vehicles Manufacturers Association v. State Farm Mutual Automobile Insurance Company, 463 U.S. 29, 43 (1983) ("MVMA v. State Farm").

Here Congress made clear its intent that OSHA was only to consider feasibility, not cost/benefit considerations, in promulgating toxic substances standards; this mandate was confirmed by the Supreme Court in ATMI. OSHA, therefore, is precluded from applying cost/benefit analysis in promulgating the EtO standard. Cf. Center for Science in the Public Interest v. Department of the Treasury, 573 F. Supp. 1168, 1174 (D.D.C. 1983), app. dismissed, 727 F.2d 1161 (D.C. Cir. 1984) (agency could not rescind regulation on the basis of cost/benefit criteria where Congress had not included such criteria as a basis for the exercise of discretion by the agency under its statutory mandate). See also Silverglade, Judicial Control of Regulatory Action Based on Cost/Benefit Analysis, 36 Admin. L. Rev. 387, 391 (1984) ("[t]he Supreme Court's decision [in MVMA v. State Farm] stands for the proposition that agencies can only consider cost factors to the extent that their statutory mandate permits them to do so").

Executive Order 12,291 cannot provide an "independent basis" for OSHA's consideration of cost/benefit factors in its decision to delete the STEL from the EtO standard. First, as indicated above, those factors are applicable to agency rulemaking only "to the extent permitted by law." Executive Order 12,291, § 2. More importantly, "[u]nder the structure of government -- the separation of powers -- established by the Constitution, the President has no authority to alter policy and principles declared by Congress." National Federation of Federal Employees v. Brown, 645 F.2d 1017, 1025 (D.C. Cir. 1981). An executive order cannot supersede a statute. Marks v. Central Intelligence Agency, 590 F.2d 997, 1003 (D.C. Cir. 1978).

At least one United States District Court has overturned an attempt by an administrative agency to base the rescision of a regulation on Executive Order 12,291 where the agency's Congressional mandate precluded cost/benefit consideration. In Center for Science in the Public Interest v. Treasury, supra, 573 F. Supp. at 1175, Judge Pratt held that "the broad thrust of Executive Order No. 12,291 provides an insufficient basis for the defendants to disregard their statutory duties." Likewise, OSHA's deletion of the STEL provision in its June 15 EtO standard was based on statutorily impermissible cost/benefit criteria. This Court should rescind the deletion and order OSHA to promulgate the EtO standard as written on June 14, 1984 with a 10 ppm 15-minute STEL.

II. OMB'S INTERFERENCE IN OSHA'S ETO RULEMAKING CANNOT BE JUSTIFIED AS A VALID EXERCISE OF EXECUTIVE POWER UNDER ARTICLE II OF THE CONSTITUTION

For the reasons set forth above, OMB's interference in OSHA's EtO standard-setting under the purported authority of Executive Order 12,291 violated Congressional intent in three ways: it displaced the Secretary of Labor as the administrative decisionmaker; it prevented meaningful public participation in and effective judicial review of the rulemaking; and it caused the application of statutorily impermissible substantive criteria. Such interference with a proper exercise of Congressionally delegated rulemaking authority cannot be justified as a valid application of executive power under Article II of the Constitution. It is instead a usurpation of Congress' legislative prerogatives.

It is indisputably true, as Respondents contend, that the President "may require the opinion, in writing, of the principal Officer in each of the executive

Departments, upon any Subject relating to the Duties of their respective Offices." U.S. Const. art. II, § 2, cl. 1. The President, relying on his constitutional obligation to "take Care that the Laws be faithfully executed," U.S. Const. art. II § 3, also has the power to remove a subordinate officer, even if that officer enjoys certain rulemaking authority delegated by Congress. See Myers, Administratrix v. United States, 272 U.S. 52 (1926). And, in fulfilling his duties under the "take care" clause, the President may "supervise and guide" subordinate officers' "construction of the statutes under which they act in order to secure . . . uniform and unitary execution of the laws." Id. at 135. As this Court summarized in Sierra Club v. Costle: "To ensure the President's control and supervision over the Executive Branch, the Constitution -- and its judicial gloss -- vests him with the powers of appointment and removal, the power to demand written opinions from executive officers, and the right to invoke executive privilege to protect consulative privacy." 657 F.2d at 405 (footnote omitted).

No court, however, has ever held that the President may go further and "ensure [his] control and supervision over the Executive Branch" by dictating the outcome of a rulemaking process to the agency charged by Congress with administrative discretion. The President's authority over subordinate executive officials is not absolute and does not extend to usurping the legislative power invested in Congress by Article I of the Constitution and delegated by Congress to a specified agency. As noted by Chief Justice -- and former President -- Taft, writing for the Court in Myers: "Laws are often passed with specific provision for the adoption of regulations by a department or bureau head to make the law workable or effective." 272 U.S. at 135. Notwithstanding the President's authority to guide and supervise subordinates, "there may be duties so peculiarly and specifically committed to the discretion of a particular officer as to raise a question whether the President may override or revise the officer's interpretation of his statutory duty in a particular instance." Id. Accord, United States ex rel. Accardi v. Shaughnessy, 374 U.S. at 267-68 ("[i]f the word 'discretion' means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience").

Chief Justice Taft's conclusion that, although the President may remove executive officers if he is dissatisfied with their performance, he may not interfere with their execution of their duties, is consistent with a long line of legal opinions dating back to the early days of our Republic. Attorney General opinions throughout the nineteenth century emphasize that the President may not displace nor interfere with subordinate officials in the exercise of their statutory duties.

> "The constitution assigns to Congress the power of designating the duties of particular officers: the President is only required to take care that they execute them faithfully . . . . If the laws, then, require a particular officer by name to perform a duty, not only is that officer bound to perform it, but no other officer can perform it without a violation of the law; and were the President to perform it, he would not only not be taking care that the laws were faithfully executed, but he would be violating them himself."

1 Op. Att'y. Gen. 624, 625-26 (1823).

> "It has repeatedly been held that the observance of your constitutional duty of taking care that the laws be faithfully executed does not itself warrant your taking part in the discharge of duties devolved by law upon an executive officer."

18 Op. Att'y. Gen. 31, 33 (1884).

> "The President has . . . take[n] care that the laws be faithfully executed; that is, that the other executive and administrative officers of the government faithfully perform their duties; but

> the statutes regulate and prescribe these duties, and he has no more power to add to, or subtract from the duties imposed upon subordinate executive and administrative officers by the law, than those officers have to add or subtract from his duties."

19 Op. Att'y. Gen. 685, 686-87 (1890).[21]

These Attorney General opinions on the limits of Executive authority accurately reflected prior judicial interpretations on the scope of Article II powers. For example, in Kendall v. United States, 37 U.S. (12 Pet.) 524 (1838), the Supreme Court considered the issue of Presidential authority to direct a subordinate officer's performance of ministerial duties delegated by Congress. The Court rejected the contention that the "take care" clause authorized Presidential involvement in the tasks at issue:

> "It was urged at the bar, that the postmaster general was alone subject to the direction and control of the President, with respect to the execution of the duty imposed upon him by this

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[21] Against this long line of authority, Respondents cite only Attorney General Cushing's view that "no Head of Department can lawfully perform an official act against the will of the President." 7 Op. Atty. Gen. 453, 469-70 (1885). cited in Brief for Respondents, p. 86. As Morton Rosenberg has noted, "The opinion was called 'extreme' by a prominent early commentator. F. Goodnow, The Principles of the Administrative Law of the United States, 81 (1905)." Rosenberg, Beyond the Limits of Executive Power: Presidential Control of Agency Rulemaking Under Executive Order 12,291, 80 Mich. L. Rev. 193, 204 n.55.

> law, and this right of the President is claimed, as growing out of the obligation imposed upon him by the constitution, to take care that the laws be faithfully executed. This is a doctrine that cannot receive the sanction of this court. It would be vesting in the President a dispensing power, which has no countenance for its support in any part of the constitution; and is asserting a principle, which, if carried out in its results, to all cases falling within it, would be clothing the President with a power entirely to control the legislation of congress, and paralyze the administration of justice.
>
> "To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible." Id. at 612-13.

In short, where a valid duty is imposed upon an executive officer by Congress, "the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President." Id. at 610. The present Administration has acknowledged as much. In its 1981 memorandum justifying Executive Order 12,291, the Justice Department acknowledged this limitation on Presidential authority: "[I]t is clear that the President's exercise of supervisory powers must conform to legislation enacted by Congress. In issuing directives to govern the Executive Branch, the President may not, as a general proposition, require or permit agencies to transgress boundaries set by Congress." Memorandum of February 13, 1981, supra p. ___, at 488 (citing Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)) (footnote omitted). Moreover, the Justice Department memorandum went on to make a point specifically applicable here: "Congress may constitutionally conclude that some statutory responsibilities should be carried out by particular officers without the President's revision, because such officers head agencies having the technical expertise and institutional competence that Congress intended the ultimate decisionmaker to possess." Id. at 489 (footnote omitted).

In this case, Congress has in fact "constitutionally conclude[d] that some statutory responsibilities should be carried out by particular officers without the President's revision," and has done so precisely because "such officers head agencies having the technical expertise and institutional competence that Congress intended the ultimate decisionmaker to possess." Id. OMB's intervention in OSHA's EtO rulemaking plainly contravened that constitutionally appropriate conclusion. In these circumstances, Justice Jackson's famous statement in

Youngstown Sheet and Tube Co. v. Sawyer is particularly appropriate:

> "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting on the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system."

343 U.S. 579, 637-38 (1952) (Jackson, J., concurring) (footnote omitted). OMB's actions here cannot survive that kind of scrutiny.

CONCLUSION

OMB's decision to delete the STEL from OSHA's EtO standard contravened Congress' intent that OSHA standards be set by the Secretary of Labor, that they be promulgated pursuant to rulemaking procedures that permit meaningful public participation and judicial review, and that they be based upon the substantive health and safety criteria contained in the OSH Act. There can be no constitutional justification for such a usurpation of Congressional prerogatives. Accordingly, the Congressional amici respectfully urge this Court to vacate the EtO standard published on June 15, 1984, and to reinstate the EtO standard incorporating a 10 ppm 15-minute, STEL which the Secretary of Labor properly promulgated on June 14, 1984.

Respectfully submitted,

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Mr. Brooks. As to what can be done, I think it is reasonable to assume that Jim Miller does not want to see this $5 million cut out. There are alternatives available to them for expending money on their projects and keeping Wendy in her job down there, but they would hate to do those things. They would rather have this $5 million and that is nice. But we ought to cut it out now and maybe before we come to conference later this year they can put in a request for authorization. We can pass that pretty quickly if they indicate that is what they want to do with the money and if they follow the paperwork objectives for which that money was appropriated after being authorized and if they make some agreement, some kind of accord, I guess, with John Dingell and the other chairmen of the legislative committees. They feel rather strongly that OIRA interferes with these agencies when they do all the regulatory review and intimidate the various agencies which I think is perhaps a little much.

So I think that John is agreeable to working on this. I know he is, and I am agreeable to working on it. I think Mr. Miller wants to. I am going to see him very shortly, and we will see if we can resolve this. I also want to talk to them about the general deferral problem that the Appropriations Committee and I have shared a keen interest in—a bipartisan interest, I might add.

Mr. Roybal. Yes.

Mr. **Brooks**. We do not think they should defer $22 billion worth of government expenses after approval by the Congress and signed by the President. He changed his mind and says, "I want to defer it all." The compromise issues to do that and to give him $5 million to cut anywhere he wants, is equally dangerous.

Mr. **Roybal**. Sure.

Mr. **Brooks**. So I am—I am afraid that we are going to have to spend a good bit of time with Mr. Miller, but he is pleasant enough. I look forward to working with him as close as I can and certainly also with the Appropriations Committee in the best effort to resolve both this major overall deferral problem and this problem affecting this particular legislation.

Mr. **Roybal**. What we would like to see, Mr. Brooks, is a situation where the authorizing chairmen and Mr. Miller and this committee can work together to solve the problem.

Mr. **Brooks**. Sure.

Mr. **Roybal**. I think that is a reachable objective.

Mr. **Brooks**. We cannot do that before you cut out the money.

Mr. **Roybal**. I understand.

Mr. **Brooks**. If you cut out the money now, we are going to have a much better opportunity to come to a meeting of the minds with these people. After they have the money, they are very difficult to deal with, you know. You have dealt with people like that, Mr. Chairman. After they get the money, they do not recognize your name anymore—who are you?

Mr. **Roybal**. I know the situation.

Mr. Skeen.

Mr. **Skeen**. We got a vote on, Mr. Chairman, but I think I can expedite what I have to ask.

I am delighted to have this time to have this conversation with Chairman Brooks. I think this is a very important issue. We discussed it this morning. We got to the business of who is authorized and who is not authorized, and we find we have several agencies that have not been authorized——

Mr. **Brooks**. Yes.

Mr. **Skeen** [continuing.] For a number of years now. That creates some problems, if you use that as a criteria on which to hold up an appropriation. I have no quarrel with that.

First of all, have these folks ever been asked to come before your committees and so forth and explain what the heck they are doing?

Mr. **Brooks**. Yes. We have talked with them and tried to get them to do the Paperwork Act over the last six years.

Mr. **Skeen**. You cannot reach agreement?

Mr. **Brooks**. I had Frank Horton talk to them. We have worked on them and just cannot get anywhere. We had Mrs. Gramm here two weeks ago, and she testified; and, you know, they tell you, yes, we are interested in that and we are doing something, but they do not do anything. I hate to say it, but they have not had their heart in it.

Mr. **Skeen**. One suggestion I would make before we leave here is there is another possibility and that is fencing language in our appropriation act that says you do not get the appropriation if you do not get the authorization or, in addition, either or, that these funds would be released on authorization or that by a date certain deadline. So that makes them either get up here and do something about the situation rather than just totally deadlocking this.

Mr. Brooks. I think, Congressman, there is a big advantage to fencing them in. I think we would be better off though to straight not give them the money and later work out an agreement. When we work out the agreement, I will pass that authorization and you can put the money in the conference report and it will be over—you won't go to the Floor for a month, Mr. Chairman?

Mr. Roybal. About a month.

Mr. Brooks. A month.

Mr. Skeen. It was a suggestion.

Mr. Brooks. They can do it in a week if they want to get right with the Lord.

Mr. Skeen. Depending on whose Lord it is, yes, we all want to get right.

Mr. Brooks. I am ecumenical, yes.

Mr. Skeen. Are you?

Mr. Brooks. Yes.

Mr. Skeen. So am I. I have the most ecumenical songs I have written already, but I think that some adjustment should be made in there and there should be some dialogue between these——

Mr. Brooks. We are going to work with them.

Mr. Skeen. The idea of just shutting them off, you shut them off, they do not do anything.

Mr. Brooks. Oh, they are going to do something.

Mr. Skeen. Okay, but I am with the chairman of this committee that we ought to reach a resolution someway or another.

Mr. Brooks. If we can, we will do that; but if you cut out their money, we can reach a resolution quicker.

Mr. Skeen. That is a great way to get somebody's attention up here, to cut the money off.

Mr. Brooks. I think that is about the only way to get the attention of some of them.

Mr. Skeen. There are problems——

Mr. Brooks. I am for this legislation; Horton and I worked on it.

Mr. Skeen. You put it together.

Mr. Brooks. For five years we did.

Mr. Skeen. You do not want to see it bastardized, to use a phrase.

Mr. Brooks. We should not give them a nickel until they get on with it.

Mr. Skeen. I do not have any trouble understanding you. I understand perfectly.

Mr. Roybal. The truth is that, if that money is put in, the point of order can be called and probably will be called on the Floor of the House.

Mr. Brooks. It sure would be. You do not want to have that problem. That is unbecoming.

Mr. Skeen. That is the point I was trying to make.

Mr. Brooks. I do not like to make points of order against the Appropriations Committee.

Mr. Skeen. I do not like it against Customs, Mint, FEC or anybody else.

Mr. Brooks. They probably do not want that either.

Mr. **Skeen**. I hope so. We have a tremendous interest in this Customs group, for one, which has not been authorized.

Mr. **Brooks**. But I am not in charge of that authorization.

Mr. **Skeen**. I know that, Ways and Means is. If we can depend on Ways and Means as much as we can on Government Operations, I think we would get our authorization through.

Mr. **Brooks**. Well, I do not know about that; but if there is an authorization request to me and we have an understanding, we will get it moved on.

Mr. **Skeen**. You bet. I believe you.

Mr. **Brooks**. All right.

Mr. **Skeen**. Do not tell us we cannot do it; we are from Texas.

Mr. **Brooks**. You are right, Mr. Chairman.

Mr. **Roybal**. We can end on that very favorable note, two gentlemen being from Texas. We would like to thank you for your testimony. The committee will take it under consideration, and we must all go now together and vote.

Mr. **Brooks**. Thank you.

Mr. **Roybal**. We will be back in five-ten minutes.

[Recess.]

WEDNESDAY, APRIL 16, 1986.

COMMEMORATIVE STAMP FOR CATHOLIC HIGHER EDUCATION

WITNESS

FATHER WILLIAM L. GEORGE, S.J., SPECIAL ASSISTANT TO THE PRESIDENT OF GEORGETOWN UNIVERSITY

Mr. ROYBAL. The committee will be in order.

We will hear from Father William George, Special Assistant to the President of Georgetown University.

Reverend GEORGE. Mr. Chairman, I am Father George, Special Assistant to the President of Georgetown University. Thank you for the opportunity to speak today about an important anniversary in United States history that will be celebrated in three years.

1989 is the anniversary of 200 years of Catholic higher education in the United States. I really came to ask the committee for whatever assistance and support it could give as the university approaches the Postal Advisory Commission concerning the commemorative stamp to commend 200 years of Catholic higher education.

As it was the Congress that chartered Georgetown, we always tend to keep the Congress informed of what we are up to; and when we do have a sketch and artist's rendering, I will let your staff have that as well.

But as there are over 600,000 students in the Catholic higher education system in the United States, and we are such a major influence in higher education I thought it would be appropriate and the university does that the anniversary be commemorated, and that is basically what I wanted to ask the committee, if it could support us, help us if we need it, and we appreciate it.

[The statement of Father William L. George, S.J. follows:]

HOUSE APPROPRIATIONS SUBCOMMITTEE ON TREASURY AND POST OFFICE

Mr. Chairman and members of the Committee, I am Father William L. George, S.J., Special Assistant to the President of Georgetown University. Thank you for the opportunity to speak today about an important anniversary in United States history that will be celebrated in three years.

1989 is the anniversary of 200 years of Catholic Higher Education in the United States. The first institution was founded on the banks of the Potomac in 1789 in the nation's Capital, chartered by the first Congress. The founder was John Carroll, a member of one of the most significant American families during the revolution. John Carroll was both a statesman, an Envoy of General Washington, and a Prelate, the first Bishop of the United States.

We would ask that the committee assist in whatever way it can to commemorate such a nationally historic event.

Today there are 235 Catholic colleges and universities in the United States, enrolling nearly 600,000 students. Millions of graduates of Catholic institutions of higher learning serve and work in every walk and clime of American life. Primarily undergraduate institutions, Catholic colleges and universities range in size from 100 students to over 20,000, and are located in 46 states, the District of Columbia and Puerto Rico. Catholic higher education has educated large numbers of this country's immigrants and continues to attract students and faculty from diverse backgrounds and cultures. Approximately 16% of the students enrolled are members of various U.S. ethnic groups. Women now constitute over 53% of the total enrollment in Catholic higher education. Clearly, Catholic higher education is an integral part of our nation's educational system.

In 1989 our country will celebrate the 200th anniversary of the U.S. Constitution, the first Presidential election, the first Congress, and the Bill of Rights. Incidently, 1789 was also the year of Adam Smith's The Wealth of Nations, and the French Revolution. We add to these significant anniversaries the celebration of 200 years of Catholic Higher Education in the United States. To help commemorate this auspicious occasion we will propose that a postage stamp be commissioned. It would be appropriate that the colors of this commemorative, bicentennial stamp be blue and gray, the official colors of the first Catholic University which were adopted at the end of the Civil War, signifying the union of North and South.

We seek your assistance and support in this proposal celebrating 200 years of Catholic higher education in the United States.

On behalf of Rev. Timothy S. Healy, S.J., thank you for this opportunity to testify.

Mr. Roybal. That support would be in the form of assistance in trying to get a commemorative stamp. That is your request; is that correct?

Reverend George. Yes, with the Commission. As I understand it, there is an Advisory Commission that rules on what is an acceptable request and what is not. I would like to keep you informed and ask that if we make a good submission that the committee assist us. We are going to submit it probably within a couple of months, make a formal proposal. They usually look at these things two to three years in advance of the commemoration. They exclude such things, as I understand it, as religious figures which excludes Bishop Carroll, the founder of Georgetown. They exclude specific universities, so our hope was with just Catholic higher education and appropriate colors that it—for the school of which we are, that that would be sufficient and acceptable.

Mr. Roybal. Would there be a design also submitted of some kind?

Reverend George. Yes.

Mr. Roybal. That is not as yet——

Reverend George. It is in the process of being sketched. Two or three different renderings are in the process. Nothing on it specifies any particular university.

Mr. Roybal. You can show a building or structure, I suppose.

Reverend George. A sketch, yes.

Mr. Roybal. OK.

Reverend George. The true blue and gray we would know.

Mr. Roybal. What you are saying is that you have to start now in order to get it done by 1989?

Reverend George. Correct.

Mr. Roybal. It takes that long?

Reverend George. Yes. They have to go through various reviews, artist's review, historians review it; it is quite a lengthy process, I understand.

Mr. Roybal. Who does the reviewing?

Reverend George. The Postal Advisory Commission.

Mr. Roybal. I see. It is entirely up to the Commission to make that decision.

Reverend George. Yes.

Mr. Roybal. Does that Commission appear before our committee?

Mr. Smith. No, sir, they do not.

Mr. Roybal. But we take care of certain needs of the Postal Service, don't we?

Mr. Smith. Yes, sir, we do.

Mr. Roybal. So I can see how we can be of some assistance.

Reverend George. Thank you.

Mr. Roybal. We will do everything we can to be of help.

Reverend George. Thank you very much. Father Healy would appreciate that.

Mr. Roybal. We will just take it from there.

Reverend George. OK.

Mr. Roybal. OK.

TUESDAY, APRIL 15, 1986.

TESTIMONY OF MEMBERS OF CONGRESS AND OTHER INTERESTED INDIVIDUALS AND ORGANIZATIONS

RESTORATION OF FUNDS TO PUERTO RICO

WITNESS

HON. JAIMIE B. FUSTER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. SKEEN [presiding]. The committee will come to order. The committee is in session today to hear the testimony of those organizations and persons who would like to express their views on matters under the jurisdiction of this subcommittee.

As you may have noticed, the flags are flying at half-staff at the Capitol today out of respect for former Congressman Joseph P. Addabbo of New York, a Member of this subcommittee who passed away last week. His funeral is today in New York and the chairman and several Members of the subcommittee are attending that funeral and regret that they are not able to be here this morning.

The chairman has asked me to preside pending his arrival because he knew that re-scheduling the hearing could be very inconvenient to many of you, particularly those who have come here from outside of the Washington area. The chairman sends his apologies and would like to offer the opportunity for anyone who desires to do so the opportunity to testify at another time.

The record that we make today will be reviewed by the chairman and will be published for use by all Members of Congress as the Treasury, Postal Service and General Government bill for 1987 makes its way through the legislative process.

I would like to welcome as our first witness today the Hon. Jamie Fuster of Puerto Rico. Welcome. We are pleased to hear your testimony at this time.

Mr. FUSTER. Mr. Chairman, I appear before you on behalf of the three and a half million American citizens who live in Puerto Rico whom I represent in the U.S. Congress, to request the subcommittee's support for the budgetary recommendations approved and submitted on February 25, 1986, by the full House Interior and Insular Affairs Committee urging the restoration of funds to Puerto Rico that were unduly cut in the fiscal year 1986 budget under the Gramm-Rudman legislation.

Contrary to what I believe was the Congressional intent, GAO applied the legislation in question to internal revenue collections for Puerto Rico. It subjected to reduction excise taxes and customs duties that for more than 70 years the Federal Treasury has collected without alteration for Puerto Rico, in an arrangement which is part of the national and international commitments of the United States to the Commonwealth of Puerto Rico.

I believe urgent action is needed to clarify this matter and to ensure that full payment of these collections is made to Puerto Rico as required by Public Law 600, the compact between the U.S. and the people of Puerto Rico which created the Commonwealth of Puerto Rico.

On January 21, 1986, the Comptroller General of the U.S. included internal revenue collections for the Commonwealth of Puerto Rico, which traditionally have been covered over to the Puerto Rican Treasury, in his list of accounts subject to sequestration under the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177). In so doing, the Comptroller General reversed the treatment accorded to such collections by the Directors of the Office of Mangement and Budget (OMB) and of the Congressional Budget Office (CBO), which had not included them in their official list of sequesterable funds.

The decision by the Comptroller General was mandatorily incorporated as part of the Sequestration Order for Fiscal Year 1986 issued by President Reagan on February 1, 1986.

We feel that the sequestration of internal revenue collections for Puerto Rico is not only not unequivocally required by the Gramm-Rudman Act but also that it has been done in contravention of long-standing federal norms and congressional policies.

Federal cover over to Puerto Rico of U.S. excise tax collections from the island is a fundamental element of the fiscal relationship between the U.S. and the Commonwealth of Puerto Rico and a policy arrangement that the U.S. has consistently honored throughout this century.

The present arrangement by which the United States Treasury acts as a collection agent for the Commonwealth with respect to excise taxes on Puerto Rican goods sold on the mainland has its roots in the first Organic Act of Puerto Rico, enacted by Congress in 1900. It first got its present form in 1917, pursuant to the second Organic Act of Puerto Rico. The current cover-over provision was enacted as part of the Puerto Rican Federal Relations Act of 1950 (Public Law 600) which created the Commonwealth and was adopted by Puerto Rico and the mainland in the nature of a compact.

It has been authoritatively established by federal judicial decisions that the cover-over mechanism was not created for federal revenue purposes. Indeed, as the Director of OMB explained in his testimony to the U.S. Senate Budget Committee (January 22, 1986), these funds appear in the federal budget only "as an incidental matter for convenience of administration rather than as a means of resource allocation." By their very nature they are not funds properly subject to a sequestration scheme because they are not funds that could in any way be utilized by the Federal Government. They are, by nature, analogous to state taxes which are merely collected by the Federal Government acting as an agent for Puerto Rico.

The purpose of the cover-over provision has long been well established. The mechanism was created to compensate Puerto Rico for a serious economic and constitutional limitation it came to suffer when annexed to the United States in 1898: its inability to impose and collect customs duties on foreign imports.

Puerto Rico, a small, resource-poor island has always depended on imports for its necessities. Customs duties on such imports could be a source of large amounts of revenue for the Puerto Rican treasury, as they were once in the past when the island imported many European goods and collected the corresponding duties. That possibility was disrupted by the relationship with the mainland since Puerto Rico not only relies for its imports mostly on duty-free products it buys from the U.S. but also because under the terms of the relationship Puerto Rico lacks the constitutional authority to impose customs duties. To remedy this situation Congress enacted the cover-over provision.

The cover-over provision, then, is clearly not an arrangement to produce revenues for the Federal Government, but rather a mechanism to permanently offset a serious structural drawback in the relationship between the U.S. and Puerto Rico. As such the funds related to it cannot be subject to sequestration. Such funds could not have been intended for reduction under Gramm-Rudman without at the same time causing a gross and drastic distortion of a federal-insular arrangement that has been deliberately preserved by Congress and the executive for many decades and that now forms part of the judicially recognized bilateral compact between Puerto Rico and the United States which is the constitutional basis for the existing relationship between the island and the mainland.

There is nothing in the record of Gramm-Rudman to suggest a Congressional intent to so radically change the nature of the funds in question. Indeed, there is nothing in the text of Public Law 99-177 that specifically authorizes the sequestration of internal revenue collections for Puerto Rico.

The legislative record of the Gramm-Rudman Act is totally lacking of any mention or discussion of this matter. This absolute silence in the law and the record points to the true intent of Congress: no one involved in the drafting of the Act even thought that revolving accounts such as the ones in question were sequesterable funds. Given the immense constraint faced in passing this bill, the issue did not even merit discussion. Evidence of this fact is provided by the statements of several key congressmen who have direct jurisdiction over the matter, and who have expressed their opinion that it was never the deliberate intent of Congress to subject Puerto Rican excise taxes to reduction under the Act.

Moreover, from a strictly technical point of view, it is clear that the funds at issue can be considered as exempt from sequestration under one of the specific clauses of the Act.

The exemption in question is the exemption for "trust funds." Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds" are exempted, under Section 255(g)(1) of the Gramm-Rudman Act, from the deficit-reducing spending cuts imposed by Part C of the Act. Under 31 U.S.C. Section 1321, the account at issue is explicitly classified on the books of the U.S. Treasury as a "trust fund."

Thus, since the budget account for "Internal Revenue Collections for Puerto Rico" is a trust fund, it comes within the specific exception for trust funds in the Gramm-Rudman Act, and it should not have been listed among those subject to sequestration.

To conclude, the Comptroller General's decision regarding Puerto Rican excise taxes is erroneous. It is the result of a narrow and rigid interpretation of that part of the Act which generally subjects permanent indefinite appropriations to sequestration. It is the result of a view that deems the Act as absolutely comprehensive and mechanical and which conveniently frees the General Accounting Office from having to ponder matters that purportedly are not within the scope of the Act.

It behooves Congress—and this subcommittee can play a decisive role—in the clarification of this matter to put an end to the substantial unintended harm that has already resulted from GAO's narrow decision.

[The statement of Mr. Fuster follows:]

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MINING AND NATURAL
RESOURCES

TESTIMONY OF THE HON. JAIME B. FUSTER BEFORE THE HOUSE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS SUBCOMMITTEE

April 15, 1986

Mr. Chairman, distinguished members of the Subcommittee:

I appear before you on behalf of the 3.5 million American citizens who live in Puerto Rico, whom I represent in the U.S. Congress, to request the Subcommittee's support for the budgetary recommendations approved and submitte on February 25, 1986 by the full House Interior and Insular Affairs Committee urging the restoration of funds to Puerto Rico that were unduly cut in the FY '86 budget under the Gramm-Rudman legislation. Contrary to what I believe was the Congressional intent, GAO applied the legislation in question to internal revenue collections for Puerto Rico. It subjected to reduction excise taxes and customs duties that for more than 70 years the Federal Treasury has collected without alteration for Puerto Rico, in an arrangement which is a part of the national and international commitments of the United States to the Commonwealth of Puerto Rico. I believe urgent action is needed to clarify this matter and to ensure that full payment of these collections is made to Puerto Rico as required by P.L. 600, the Compact between the U.S. and the people of Puerto Rico which created the Commonwealth of Puerto Rico.

On January 21, 1986 the Comptroller General of the U.S. included internal revenue collections for the Commonwealth of Puerto Rico in his list of accounts subject to sequestration under the Balanced Budget and Emergency Control Act of 1985 (P.L. 99-177). In so doing, the Comptroller General reversed the treatment accorded to such collections by the Directors of the Office of Management and Budget (OMB) and of the Congressional Budget Office (CBO), which had not included them in their official list of sequesterable funds. (See 51 Fed. Register, No. 13, pp. 2813-15 and page 2844)

The decision by the Comptroller General was mandatorily incorporated as part of the Sequestration Order for Fiscal Year 1986 issued by President Reagan on February 1, 1986, which became effective on March 1, 1986. (See House Document 99-160, p. 811)

As will be shown below, the sequestration of internal revenue collections for Puerto Rico is not unequivocally required by the Gramm - Rudman Act and has been done on the basis of an unduly restrictive interpretation of said Act, in contravention of long-standing federal norms and overriding congressional policies.

I- Congressional Intent and Executive Policies Regarding Puerto Rico's Internal Revenue Collections

Federal cover over to Puerto Rico of U.S. excise tax collections from the island is a fundamental element of the fiscal relationship between the U.S. and the Commonwealth of Puerto Rico and a policy arrangement that the U.S. has consistently honored throughout this century.

The present arrangement by which the United States Treasury acts as a collection agent for the Commowealth with respect to excise taxes on Puerto Rican goods sold on the mainland has its roots in the first Organic Act of Puerto Rico,enacted by Congress in 1900. It first got its present form in 1917, pursuant to the second Organic Act of Puerto Rico. The current cover over provision was enacted as part of the Puerto Rican Federal Relations Act of 1950 (P.L. 600) which created the Commonwealth and was adopted by Puerto Rico and the mainland in the nature of a Compact.

It has been authoritatively established that the cover over mechanism was not created for federal revenue purposes. (See Commonwealth of Puerto Rico v Blumenthal, 642 F 2d 622, 634 (1980)) Indeed, as the Director of OMB explained in his testimony to the U.S. Senate Budget Committee (Jan. 22, 1986), these funds appear in the federal budget only "as an incidental matter for convenience of administration rather than as a means of resource allocation". By their very nature they are not funds properly subject to a sequestration scheme because they are not funds that could in any way be utilized by the federal government. They are, by nature, analogous to state taxes which are merely collected by the federal government acting as an agent for Puerto Rico.

The purpose of the cover over provision has long been well established. The mechanism was created to compensate Puerto Rico for a serious economic and constitutional limitation it came to suffer when annexed to the United States in 1898: its inability to impose and collect customs duties on foreign imports. Puerto Rico, a small, resource-poor island has always depended on imports for its necessities. Customs duties on such imports could be a source of large amounts of revenue for the Puerto Rican treasury, as they were once in the past when the island imported many European goods and collected the corresponding duties. That possibility was disrupted by the relationship with the mainland since Puerto Rico not only relies for its imports mostly on duty-free products it buys from the U.S. but also because under the terms of the relationship Puerto Rico lacks the constitutional authority to impose customs duties. To remedy this situation Congress enacted the cover - over provision. (See Com. of P.R. v. Blumenthal, op. cit., at page 629. See also H.R. Rep. No. 77, 64th Cong., 1st Sess. 1-2 (1916))

The cover-over provision, then, is clearly not an arrangement to produce revenues for the federal government, but rather a mechanism to permanently offset a serious structural drawback in the relationship between the U.S. and Puerto Rico. As such the funds related to it cannot be subject to sequestration. Such funds could not have been intended for reduction under Gramm-Rudman without at the same time causing a gross and drastic distortion of a federal- insular arrangement that has been deliberately preserved by Congress and the Executive for many decades. There is nothing in the record of Gramm-Rudman to suggest a Congressional intent to so radically change the nature of the funds in question.

II- U.S. Domestic and International Commitments and the Puerto Rican Internal Revenue Collections

The above is particularly true if one considers that the cover over mechanism is also part of the U.S. domestic and international commitments regarding Puerto Rico and that a unilateral modification of the historical policy of rebating internal revenue collections at issue would not only contravene U.S. domestic obligations to Puerto Rico but U.S. international obligations as well.

The cover over provision was made part of the Compact entered into by Puerto Rico and the United States in 1950 whereby the Commonwealth relationship was created, pursuant to Public Law 600, (64 Stat. 319, 48 USC 734) a Compact that, as the United States there, "is far stronger than a treaty, /Inasmuch as/ a compact cannot be denounced by either party unless it has the permission of the other". (Statement by Mr. Masson Sears; see U.S. Mission to the United Nations Press Release No. 1741. p. 1: Official Records of the General Assembly, Eighth Session, Fourth Committee, Trusteeship, pp. 216)

In 1953 the United States, pursuant to the Compact-based

Commonwealth relationship that it had just entered into with Puerto Rico, informed the United Nations that Puerto Rico was no longer a non-self governing territory under Article 73 (e) of the U.S. Charter. In requesting from the United Nations that the United States be relieved of the obligation to report annually to the world body on the situation of the island, Congresswoman Frances Bolton, member of the U.S. delegation, described the new relationship between the United States and Puerto Rico as follows:

> "The previous status of Puerto Rico was that of a territory subject to the full authority of the Congress of the United States in all governmental matters. The previous constitution of Puerto Rico was in fact a law of the Congress of the United States, which we called an Organic Act. Congress only could amend the Organic Act of Puerto Rico. The present status of Puerto Rico is that of a people with a constitution of their own adoption, stemming from their own authority, which only they can alter or amend. The relationships previously established also by a law of the Congress, (that is, by the Puerto Rican Federal Relations Act) which only Congress could amend, have now become provisions of a compact of a bilateral nature whose terms may be changed only by common consent."

The United Nations were told that a bilateral Compact ordains the relationship between the United States and Puerto Rico and on the bases of such representation the United Nations voted 26 to 16, with 18 nations abstaining, to endorse the new relationship and remove Puerto Rico from the list of non-self governing territories under United Nations tutelage. (See U.N. Gen. Assembly Resolution No. 748 (viii) of November 27, 1953). For more than one and a half decades now Cuba and other countries have attempted to have the United Nations revoke its 1953 decision on Puerto Rico, failing every time and showing by such persistent failures the continuing international validity of the United Nations 1953 decision.

It should be noted that the existence of a Compact and of a new U.S.-P.R. relationship based on said Compact has been consistently recognized in many federal judicial decisions, including some from the U.S. Supreme Court.[1]

In light of the above, it is clear that, inasmuch as the cover over provision regarding Puerto Rican internal revenue collections is an essential part of the Compact between the U.S. and the Commonwealth of Puerto Rico, it cannot be considered that Congress intended to subject such collections to Gramm-Rudman sequestration without at the same time imputing Congress with a unilateral violation of the judicially recognized Compact and a relinquishment of its commitments to Puerto Rico and to the international community.

Of course, as will be shown below, on the basis of the record and the very language of the law, it is wholly unwarranted to assume that Congress deliberately intended to contravene the Compact that governs the U.S. - P.R. relations or to distort a

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1/ Federal courts since 1953 have consistently recognized that "Commonwealth" is not a state nor a territory but a new political entity created under the terms of the Compact entered into by the People of P.R. and the U.S. See Mora v Torres, 113 F. Supp. 309, Mora v Mejías, 115 F. Supp. 610; Consentino v ILA, 126 F. Supp. 420; Cuebas v Kenton, 126 F. Supp. 366; Moreno Ríos vs US 256 F 2d 68; Wackenhut v Aponte 266 F. Supp. 401; Figueroa v People of P.R., 232 F2d 615; Cordova v Chase, 649 F 2d 36 and US v Quinones (No. 84-1461, 1st Circuit, April 1985).

The United States Supreme Court has also recognized the existence of a compact and the unique status of Commonwealth, particularly quoting approvingly lower federal court decisions. See, Wackenhut v Aponte 386 US 268 (1967); Calero v Pearson 416 US 663 (1973); Examining Board v Flores, 426 US 572 (1976) and Rod-íguez v PPD, 457 US 1 (1982).

historical fiscal mechanism that was established to remedy a grave shortcoming in the economic and political relationship between the island and the mainland.

II- The Gramm-Rudman Act and Puerto Rico's Internal Revenue Collections

In the first two parts of this memoramdum it was asserted that Puerto Rican Internal Revenue collections are not funds properly subject to a sequestration scheme; and that to do so would entail charging Congress with a drastic distortion of a long standing federal policy and with a unilateral contravention of national and international commitments regarding the people of Puerto Rico. It will be asserted now that Gramm-Rudman need not be so ominously interpreted.

At the outset it should be noted that there is nothing in the text of P.L. 99-177 that specifically authorizes the sequestration of internal revenue collections for Puerto Rico.

Likewise, the legislative record of the Gramm-Rudman Act is totally lacking of any mention or discussion of this matter. This absolute silence in the law and the record points to the true intent of Congress: no one involved in the drafting of the Act even thought that revolving accounts such as the ones in question were sequesterable funds. Given the immense constraint faced in passing this bill, the issue did not even merit discussion. Evidence of this fact is provided by the statements of several key congressmen who have direct jurisdiction over the matter, and who have expressed their opinion that it was never the deliberate intent of Congress to subject Puerto Rican excise taxes to reduction under the Act. (See accompanying letters from Congressmen Thomas Foley, William Gray and Morris Udall).

Moreover, from a strictly technical point of view, it is clear that the funds at issue can be considered as exempt from sequestration under one of the specific clauses of the Act.

The exemption in question is the exemption for "trust funds". Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds" are exempted, under Section 255(g)(1) of the Gramm-Rudman Act, from the deficit-reducing spending cuts imposed by Part C of the Act. Under 31 U.S.C. S 1321, the account at issue is explicitly classified on the books of the U.S. Treasury as a "trust fund".

The account at issue is described in the Appendix to the President's 1986 budget as follows:

> "Excise taxes collected under the Internal Revenue laws of the United States on articles produced in Puerto Rico and either transported to the United States or consumed on the island are paid to Puerto Rico (26 U.S.C. 7652)."

This account is classified as a trust fund in 31 U.S.C. Sec. 1321(a), which states, in pertinent part:

> "The following are classified as trust funds:
>
> . . . .
>
> (62) Puerto Rico special fund (Internal Revenue)."

The budget account listed by GAO as subject to reduction is unquestionably the identical account that is classified as a "trust fund" in 31 U.S.C. Sec. 1321 (a)(62). Congress originally adopted

31 U.S.C. Sec. 1321 in 1934, as Section 20 of Chapter 756 of the Laws of the Seventy-Third Congress, Second Session. The House Appropriations Committee hearings on this statute show that the "Puerto Rico special fund (Internal Revenue)" which Section 1321 (a) (62) classifies as a "trust fund" is the fund that the Treasury Department established for use in processing excise taxes collected for payment to Puerto Rico in compliance with Section 9 of the Organic Act of 1917 (Jones Act), of March 2, 1917, 39 Stat. 954 which requires that excise taxes collected by the United States on goods of Puerto Rican manufacture coming into the United States be "covered into" the Treasury of Puerto Rico; the U.S. Treasury Department handles these tax revenues as a mere collection agent for Puerto Rico. The reference to 26 U.S.C. Sec. 7652 in the discussion of the "Internal Revenue Collections for Puerto Rico" account in the President's budget makes plain that it is this excise tax cover-over that is the subject of the budget account GAO has listed for sequestration.2/

Thus, since the budget account for "Internal Revenue Collections for Puerto Rico" is a trust fund, it comes within the specific exception for trust funds in the Gramm-Rudman Act, and it should not have been listed among those subject to sequestration.

2/ Codifiers' cross-references further confirm that the account listed by GAO for sequestration and the account classified as a "trust fund" in 31 U.S.C. Sec. 1321 (a) (62) are one and the same. When the 1934 trust-fund provision was codified as 31 U.S.C. Sec. 723s in the 1935 code, the codifier inserted cross-references to that provision following both cover-over sections (48 U.S.C. Sec. 734 and 26 U.S.C. Sec. 1480 (c)).

IV- Conclusion

To conclude, the Comptroller General's decision regarding Puerto Rican excise taxes is erroneous. It is the result of a narrow and rigid interpretation of that part of the Act which generally subjects permanent indefinite appropriations to sequestration. It is the result of a view that deems the Act as absolutely comprehensive and mechanical and which conveniently frees the General Accounting Office from having to ponder matters that are not within the scope of the Act.

It behooves Congress to decisively clarify this matter, to avoid the substantial unintended harm that has already resulted from GAO's narrow decision.

[illegible]

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

[illegible]
ASSOCIATE STAFF DIRECTOR
AND COUNSEL
[illegible]
GENERAL COUNSEL
RICHARD AGNEW
CHIEF MINORITY COUNSEL

February 4, 1986

Honorable Jaime B. Fuster
U.S. House of Representatives
1428 Longworth House Office Building
Washington, D.C. 20515

Dear Jaime:

This is to reiterate certain understandings regarding the treatment of Internal Revenue collections for Puerto Rico under the Balanced Budget and Emergency Deficit Control Act of 1985.

That law exempts "payments to trust funds from excise taxes" from sequestration. It also exempts "amounts sequestered in special or trust funds" from cancellation of permanent budget authority. Finally, it provides that these amounts "remain in such funds and be available in accordance with and to the extent permitted by law."

Thus, the excise taxes which constitute Internal Revenue Collections for Puerto Rico should be paid into the trust fund designated as the Puerto Rico Special Fund, without being subject to sequestration. Further, amounts in the trust fund should be covered into the Treasury of Puerto Rico in full, without being subject to cancellation of budget authority or to sequestration or reduction since there is a permanent authorization and appropriation for this purpose.

Public Law 99-177 exempted accounts of the nature of Internal Revenue Collections for Puerto Rico from reductions to meet deficit targets through general exemptions for trust funds as well as through various specific exemptions. It is my understanding that one or more Members of the conference committee on the legislation felt that a specific exemption for Internal Revenue Collections for Puerto Rico was not necessary.

Cover overs of Internal Revenue Collections for Puerto Rico should not be sequestered. It is my hope that the offices implementing the law will recognize this.

Sincerely,

Mo Udall
MORRIS K. UDALL
Chairman

MKU:gm

[illegible]
MAJORITY WHIP

Congress of the United States
House of Representatives
Office of the Majority Whip
Washington, D.C. 20515

[illegible]

January 31, 1986

Dear Jaime:

I understand how severely Puerto Rico is impacted by the Presidential Sequestration Order issued under the requirement of the Gramm-Rudman-Hollings Amendment.

As a member of the House Conferees that considered this amendment, let me assure you that is was never my intention to include Puerto Rican Excise Taxes in the amendment. I also do not believe that this was the intention of any of the other House Conferees. Finally, I know of no directive to the GAO by the Conferees to include Puerto Rican Excise Taxes in their Sequestration Report to the President.

I would like to take this opportunity to express my admiration for your tireless efforts on behalf of Puerto Rico during the long and difficult conference with the Senate on the Gramm-Rudman-Hollings proposal. These were particularly important regarding the inclusion of Puerto Rico in the exempt food stamp program and your personal advocacy was most helpful to us in this effort.

With warmest personal regards,

Sincerely,

Tom Foley

Thomas S. Foley
Majority Whip

The Honorable Jaime B. Fuster
U. S. House of Representatives
1428 Longworth House Office Building
Washington, D.C. 20515

TSF:s

U.S. House of Representatives
COMMITTEE ON THE BUDGET
Washington, DC 20515

January 31, 1986

The Honorable Charles A. Bowsher
Comptroller General of the United States
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

This is to convey to you my concern over an account subject to sequestration in your report of January 21, 1986, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. The account involves excise taxes which are collected by the Federal government and then are covered into the Treasury of Puerto Rico. In conference, we discussed similar types of accounts and collections, and agreed that accounts of this nature would be exempt. A number of these are specifically cited in section 255(g)(1). For others not so specified a general exemption from sequestration was included for payments of excise taxes into trust funds.

As you know, Puerto Rican excise taxes are expressly classified as a trust fund by 31 U.S.C. 1321(a)(62).

Therefore I urge you to reconsider your decision to include the budget account for "Internal Revenue Collections for Puerto Rico" on the list of accounts subject to reduction.

Sincerely,

WILLIAM H. GRAY, III
Chairman

Mr. **Skeen**. Thank you.

Mr. **Fuster**. This program that I am presenting, it has to do basically with a decision made by GAO, contrary to what OMB and CBO said before. But it is not entirely clear what will happen if the Supeme Court confirms the lower court decision. The committee of Interior and Insular Affairs has put out a recommendation to live with this matter, and I have been told that the Budget Committee is going to support it. It may come to having to restore money that has been frozen, and therefore it would be in your jurisdiction to decide what is to happen.

Mr. **Skeen**. As I understand it, this subcommittee does not have the direct jurisdiction but we certainly intend to look into the problem. How much in funding has been affected by the decision, and how did GAO get into this?

Mr. **Fuster**. The amount in funding is around $14 million. That wasn't the first round of Gramm-Rudman, it could be considered the second time around.

Mr. **Skeen**. So that is the situation as it is now, and I think that you presented it very well. The Budget Committee and the authorizing committee will probably also have some action to take. We thank you very much for your testimony today. Mr. Wolf had to testify before a Senate committee and that is why he had to leave. He will be back as soon as he can give his testimony. Everybody is doing everything today and the scheduling is very ragged.

Tuesday, April 15, 1986.

DEVELOPMENT OF RESEARCH FACILITIES AT THE UNIVERSITY OF MASSACHUSETTS

WITNESSES

JOSEPH DUFFEY, CHANCELLOR, UNIVERSITY OF MASSACHUSETTS
RICHARD S. STEIN, PROFESSOR, UNIVERSITY OF MASSACHUSETTS

Mr. **Skeen**. We will next hear from Chancellor Joseph Duffey, from the University of Massachusetts.

Mr. **Duffey**. With me is Professor Richard Stein.

Mr. **Skeen**. We would be happy to have him come to the table with you. I apologize that our ranking Member, Mr. Conte, who has a very deep and abiding interest in this particular issue, could not be here. He has gone to Mr. Addabbo's funeral in New York as well.

Mr. **Duffey**. He was a good friend.

Mr. **Skeen**. He will be sorely missed. I have never seen anyone suffer the illness that he suffered with less complaint, and you certainly have to admire a gentleman who carried that burden for two years in our association. He bore the problem so well.

Mr. **Duffey**. Widely respected.

I appreciate the opportunity to come here today with Dr. Stein. I have a written testimony and I only want to read very brief sections of that testimony. I realized your time is limited. The purpose of my visit is to, first of all, express the appreciation of the trustees, the students and the faculty of the university and many members of the business community in our state for the support which this committee and especially Mr. Conte have provided in federal participation in the development of a world-class polymer research facility at the University of Massachusetts.

The creation of this strategic materials center will contribute to the continued problem of polymer research in this country. We are particularly pleased by the fact that this federal support enables us, with state support and now with industry, to provide the kind of partnership for a piece of research that is not always the most glamorous research. I didn't know what polymer was a few years ago, but it is research that is increasingly of critical concern in terms of the competitiveness of industry in the U.S. and in terms of our own defense needs. The university at the moment has been working with a number of industries and with the Air Force on a particular problem which relates to this committee of U.S. dependence upon alloys for the creation of metals used for many, many purposes.

Let me just take in the last two pages of my report where I have reprinted a document from the Congress, the Office of Technology Assessment, just two pages on strategic materials, the technologies to reduce U.S. import vulnerability. If you take the next page, you get a sense of how across the world the particular metals which are critical for the production of alloys are distributed. Notice the substantial percentage in the USSR and in South Africa. The U.S. has been in an increasingly dependent relationship to these areas of the world. As long as we continue to depend as much as we do now on alloys and metals, it is possible, indeed many foresee the prospect in the future, that we will substitute for these metals with polymeric material. Indeed, many of our industrial competitors in Europe and Japan have devoted national efforts to this process. The Federal support enables us to build facilities to bring together the equipment to work more closely with industry, which has a stake in this, as well as with defense agencies of the Federal Government on this important research.

It was for this reason that we began the process of seeking support from the Commonwealth of Massachusetts, from the Federal Government and from private industry. We have now a number of corporations that work with us from across the country, members of what is called the Center for University of Massachusetts Industry Research on Polymers, the basic research program. Dr. Stein directs that. They have committed to help raise funds for equipping laboratories and endowing professorships. We see this facility as one of the few in the country where scientists from industry will spend time working beside our academic scientists moving back and forth, a whole new relationship which we think is vital for the health of universities and of the economy.

Recognizing that we will need more funds than we presently have secured to meet the needs of researchers, we are seeking additional help from private and public sources and receiving a great deal of encouragement. The General Electric Foundation has provided a grant. We believe at the university that the Commonwealth of Massachusetts will be forthcoming with its promise of additional help.

We caucused with the Section of Finance two weeks ago, who said that in response to Congressional initiative the State is prepared to provide you additional help. The university is looking to other sources of funding. We have taken steps to meet with the GSA to project a budget and timetable, and projections have been submitted to them.

I want to express my appreciation to the General Services Administration for their cooperation and their help in moving this process forward. We are behind several other nations with which we compete in this area.

Again, Mr. Chairman, I want to thank the committee for the support that has come to this project, particularly from Mr. Conte. We feel this is an important item in the overall strategy for defense and economic well-being.

[The statement of Mr. Duffey follows:]

STATEMENT OF THE CHANCELLOR OF
UNIVERSITY OF MASSACHUSETTS, AMHERST
DR. JOSEPH DUFFEY
U.S. HOUSE OF REPRESENTATIVES
APPROPRIATIONS SUBCOMMITTEE ON TREASURY,
POSTAL & GOVERNMENT SERVICES

We at the University of Massachusetts, Amherst, want to thank you, Mr. Chairman, Mr. Skeen, all the members of this sbucommittee and especially Mr. Conte for the federal support for the development of a world class polymer research facility at the University. The creation of this Strategic Materials Research Center will contribute to the continued progress of polymer research in this country; progress that is vital to our national defense and the health of our economy.

The University is particularly excited by the federal support, because only with increased equipment and facilities, can our polymer group maintain its rate of progress in basic polymer research.

This basic research at the University of Massachusetts has far reaching ramifications for our defense needs and for the economy in general. A good case study is the work that the University's Polymer Group has done for the airforce in the area of high performance materials. University researchers have developed a polymer called PBT which has the mechanical properties of the carbon-composites used in the military F-16 and the Lear Jet. If research progresses, PBT has the potential to replace the convential steel and aluminum alloys, for which the chromium, manganese and platinum metals are the key inputs.

Today, however, our nation still uses these alloys and therefore depends upon chromium, manganese, and platinum which are primarily found in South Africa and the USSR. The attached map from the Congressional Office of Technology Assessment's report, "Strategic Materials: Technologies to Reduce U.S. Import Vulnerability", shows, better than I can verbally explain, how dependent we are upon those countries for these vital inputs to our defense system. Only if our technological base moves forward, especially in polymer science, as demonstrated by PBT, can we reduce our dependency upon these parts of the world.

The progress of polymer science also has importance in terms of the overall economy of the United States. Polymers such as PBT have the potential for creation of stronger, lighter, and more durable materials than the conventional ones in use. These new materials hold the promise for:

1) safer motor vehicles, structures, and overall infrastructures;
2) cheaper inputs into the production of the transportation and construction industries;
3) more fuel effecient transportation vehicles from these lighter and stronger materials;
4) an economy and a standard of living that would not be dependent upon unstable and hostile parts of the world.

Just as the development of PBT for defense purposes depends upon the continuance of basic polymer research, the development of PBT and other polymer materials for civilian needs is intrinsically linked to the progress of basic research. In industry, scientists often are working to apply the knowledge that exists about the behavior of polymeric materials -- their composition, their flow, their toughness, their flammability, conductivity, permeability, bondability, and shear -- in a applied manner. Dr. Lawrence McKenna, head of Monsanto's New Products' Division, put it this way, when he was explaining why his company funded basic research at the University:

> Very often when crises come up we'll cannibalize our own basic research efforts -- bring basic research people over to solve immediate, short-term problems. By putting those funds into the University, we in a sense remove basic research from our own ability to bastardize it. And it's a very, very important thing for us to have -- a source of basic, ongoing, exploratory work, in areas which lead to new science, new information. It's that kind of information that one of our scientists will use as he considers, "How should I build a polymer molecule in order to do 13 things, six of which are totally contrary to the other seven."

The problem that polymer research faces nation-wide and in particular at the Univeristy of Massachusetts is that the lack of equipment and physical space may make near to impossible for work to continue at its present level, let alone for it to reach its fullest potential to meet these national needs.

It was for this reason that the University of Massachusetts began the process of seeking support from Commonwealth of Massachusetts, the federal government, and private industry. Industry recognizes the role that basic research plays in its development/ members of the Center for University of Massachusetts-Industry Research on Polymers -- the basic research program sponsored by industry -- have committed themselves to help raise funds for equipping laboratories and endowing professorships. The General Electric Foundation has already given the University $60,000 for help with additional planning and fund raising costs.

Recognizing that the University will need more funds than it presently has secured to build a polymer research facility that can meet the needs of researchers, the University is seeking additional help from private and public sources. The University has every reason to believe that the Commonwealth of Massachusetts will be forthcoming with its promise of additional help. The University is also hopeful that other sources of funding will become available.

In addition to working to raise the necessary funds for the project, the University has already taken steps to utilize the funds that are available for the project. We have met with the General Services Administration to begin this process and a project budget, schedule, and cash draw projection have been submitted to them. The University would like to thank the General Services Administration for its cooperation and help in moving this process forward.

Again I would like to thank the Committee for the opportunity to testify and the support that the Committee and Mr. Conte in particular has given this project; a project that we at the University feel is tremendously important to the defense and economic well being of this country.

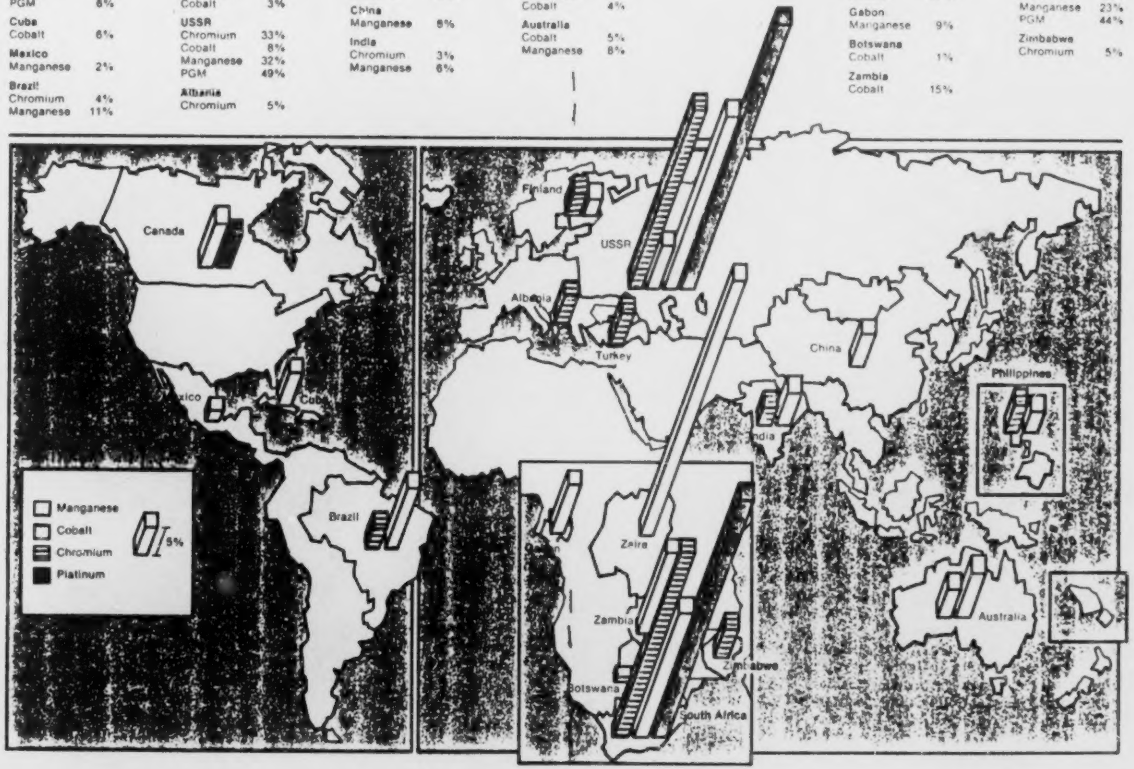
CONGRESS OF THE UNITED STATES
Office of Technology Assessment
Washington, D.C. 20510

Strategic Materials: Technologies to Reduce U.S. Import Vulnerability

Summary

Distribution of Mine Production of Cobalt, Chromium, Manganese and Platinum Group Metals—1981

Canada		
	Cobalt	8%
	PGM	8%
Cuba		
	Cobalt	6%
Mexico		
	Manganese	2%
Brazil		
	Chromium	4%
	Manganese	11%
Finland		
	Chromium	4%
	Cobalt	3%
USSR		
	Chromium	33%
	Cobalt	8%
	Manganese	32%
	PGM	49%
Albania		
	Chromium	5%
Turkey		
	Chromium	6%
China		
	Manganese	8%
India		
	Chromium	3%
	Manganese	6%
Philippines		
	Chromium	5%
	Cobalt	4%
Australia		
	Cobalt	5%
	Manganese	8%
Zaire		
	Cobalt	47%
Gabon		
	Manganese	9%
Botswana		
	Cobalt	1%
Zambia		
	Cobalt	15%
South Africa		
	Chromium	34%
	Manganese	23%
	PGM	44%
Zimbabwe		
	Chromium	5%


Canada
xico
Cub
Brazil
Manganese
Cobalt
Chromium
Platinum
5%
Finland
USSR
Alb ia
Turkey
China
ndia
Philippines
Zaire
Zambia
Botswana
Zimbabwe
South Africa
Australia

A Presentation on behalf of the STRATEGIC MATERIALS RESEARCH CENTER of the University of Massachusetts

Richard S. Stein
April 15, 1986

THE STRATEGIC MATERIALS RESEARCH CENTER
OF THE UNIVERSITY OF MASSACHUSETTS

A Presentation by Richard S. Stein, April 15, 1986

INTRODUCTION:

I should like to join Chancellor Duffey in thanking Mr. Conte and the Treasury, Postal Services Appropriations Subcommittee for their support of the Strategic Materials Research Center at the University of Massachusetts. I feel that our Center may play a significant role in the development of new generation, high technology polymeric materials essential to maintain the strong posture of the United States in this important area of material science.

I should like to acquaint you with a few developments in this field in providing materials which may decrease our dependence on alternative materials which may become scarce in the future. Such substitution may be significant in energy conservation and in providing properties not available with traditional materials.

THE GROWING IMPORTANCE OF POLYMERS:

Polymers are the generic category of material which includes plastics, fibers, films and rubbers. They have the common property that they are composed of long chains, often of many thousands of simpler molecular species (monomers). While naturally occurring materials of biological interest (proteins, nucleic acids, cellulose) are also polymers, I shall confine my remarks to synthetic materials.

Figure 1 shows a comparison of the annual production of polymers (in cubic meters) with that of steel. It is evident that polymer production is in a rapid growth stage, and is becoming of increasingly greater importance to our economy. We may wonder why this is happening. It is a combined result of the development of new polymers offering unique properties and the changing economy which places greater advantage on these properties.

In order to be less dependent upon the OPEC countries, it is desirable to decrease our needs for imported petroleum. This may be done by improving the fuel economy of automobiles. An important way to do this is by decreasing their weight by replacing metals with lighter materials. For example, Figure 2 lists the weight saving gained by replacing metals by polymer-based components for various parts of cars. These considerations have led to a rapid increase in the employment of polymers in car construction and has stimulated the development of new-generation polymers that are more effective for this use.

There is even a greater premium in using polymers to reduce the weight of aircraft. It has been estimated by Boeing personnel that fuel savings would justify the expenditure of at least $300 for materials for each pound of weight saved. Some very exotic polymers could be developed for $300 per pound! It is evident that for applications in space vehicles, there would even be a greater premium for weight saving.

Aircraft and space applications place a more stringent requirement on polymer properties. The need for strength, resistance to fatigue and performance at extremes of temperature is great. Research is needed to develop such polymers which may serve to replace strategic materials such as vanadium and titanium.

Polymers are replacing glass and metal as food containers. Polyester is almost universally used for large bottles for cabonated beverages. When a "bottle bill" was adopted in Massachusetts which required deposits on polymeric as well as glass bottles, there was initial fear that this would lead to decreased use of polymeric bottles. Actually, the effect was opposite, since the weight of shipping returned glass bottles and the cost of washing favored the employment of polymers.

A new generation of polymeric food container is gaining favor. This consists of a laminate of several different polymers combining their favorable properties. Thus, one can combine low permeability to oxygen, inertness to the food contained and good mechanical properties such as ductility. It is likely that we shall be seeing items such as plastic beer cans before long! To quote USA TODAY, "But because it's cheaper in the long run to market the beer in plastic, Du Pont has been experimenting with leading beer manufacturers including Coors, Anheuser-Busch and Pabst to develop a plastic container that can withstand pressurization, high temperature pasturization, retain carbonization, and keep beer tasting well, not like plastic."

While "garden variety" commodity polymers such as polystyrene, polyethylene, and polyvinyl chloride will be made increasingly by the oil producing countries, where monomer costs are low, the above applications require a level of technology which will be difficult for them to reach in the near future. Consequently, it is good economic strategy for the western countries to emphasize such "high tech" materials for which intensive research is required.

HIGH STRENGTH POLYMERS:

Polymers are commonly considered to be weak. This can be seen from the portion of the table in Figure 3 labelled "ISOTROPIC" in which unoriented polymers are compared with glass and steel. It is seen that polystyrene and polycarbonate, two common polymers of commerce, have specific moduli (stiffness) and specific tensile stengths appreciably poorer than glass and steel.

However, polymer chains have very different stengths in different directions. Typical polymers may involve chains in which carbon atoms are connected together. This carbon-carbon bond is the same as occurs in diamond, one of the hardest of known substances. However, the forces between separate chains are weak, and for an isotropic polymer, which has chains randomly arranged, the average properties are not spectacular.

The bottom part of Figure 3 labelled ORIENTED shows that highly elongated polyethylene and Kevlar exhibit mechanical properties (in the elongation direction) far superior to steel and glass. Here, the chains have been aligned so that their high strength direction lies along the stretching direction of the sample. A plot of specific tensile strength against specific stiffness, or modulus, is given in Figure 4. The best material for most purposes lies toward the upper right of such a diagram where both the strength and modulus are high. It is seen that the highly oriented polymeric materials are vastly superior to the conventional ones. A new product, Allied Spectra 1000, is an ultraoriented "gel-spun" polyethylene which will probably be used to make the sails in our contender in the next America Cup races. Similar products are developed by DSM in the Netherlands and Toyobo in Japan. An experimental University of Massachusetts polyethylene developed by our Professor Roger Porter is even better.

All is not ideal, however. Just as with the miracle fabric portrayed in the movie of a few decades ago, "The Man in the White Suit", these materials have an important difficiency. They melt at a rather low temperature making them inadequate for many aircraft and space applications. While they are fine for many purposes such as for sails, sutures, marine tow ropes, and bullet-proof vests where heat is not important, it would be desirable to find materials that could function well at higher temperatures. Our laboratory has been contracting with the Wright-Patterson Air Force Laboratory in developing such a material called "PBT" which shows promise for reinforcement of composites in advanced aircraft.

ELECTRICALLY CONDUCTING POLYMERS :

Electrical conductors are mostly metallic. The Japanese have pioneered the development of electrically conducting polymers which approach metals in their properties, but are much lighter. Advanced studies of these are carried out in our laboratory by Professors Karacz and Chien (who has authored a leading book on the subject). These also exhibit a "white suit" syndrome in that they are difficult to process and are unstable to exposure to air. Research promises should gradually overcome these difficulties.

Possible products involving these may be a light weight storage battery, making the elecric car more feasible, and even more "blue sky", a polymeric computer or a polymeric superconductor which could funcion at higher than the cryogenic temperatures required by conventional ones.

BIOMEDICAL APPLICATIONS :

Polymers have replaced the time-tested cat gut used for surgical sutures. The commonly used nylon and polypropylene sutures suffer by not being absorbed by the body. Hence they must be removed following surgery. Johnson and Johnson and American Cyanimid have developed absorbable polymeric sutures which will slowly disappear in the body. A similar product is an absorbable clamp for blood vessels.

If a drug is dissolved in an absorbable polymer, it will be slowly released as the poymer is absorbed, for example, in administering insulin or cancer -fighting drugs. Professor David Tirell in our laboratory has developed a "smart" controlled drug release polymer in which the liberation of the drug is triggered by the acidity occurring at the site of an infection. A "super-smart" agent might be in the offing where the release might be electrically triggered by a signal from an implanted microcomputer (like a pacemaker) which can detect a body malfunction such as indicated by blood sugar level.

Other biomedical polymer applications include "artficial skin" for temporarily covering severely burned areas and portable kidney dialysis apparatus employing hollow polymeric fibers permitting mobility for those suffering from kidney disease.

THE ECONOMIC PICTURE :

As seen in Figure 6, the United States is the world's leading plastics producer, consumer, and exporter. Figure 7 indicates that along with chemicals, the balance of trade for polymers is positive, partly compensating for the negative balance with paper, textiles, steel, minerals and other metals. We cannot afford to relax with these observations, however, as there are danger signs on the horizon. For example, Figure 8 presents information furnished me by Roger Porter, who edits POLYMER ENGINEERING AND SCIENCE, in which it is seen that the percentage of manuscripts received by the journal from American authors is decreasing while that for foreign authors is increasing.

Another indicator shown in Figure 9 is the number of patents issued in the field of plastics. Japan and the U.S. were about equal in 1972, but Japan's have sharply increaased as the '80's were approached while ours have slightly decreased. This agrees with the qualitative impression of a decline in the level of fundamental research in American industrial laboratories and a decline in numbers of graduate student applicants at leading Universities.

We have lost our lead in steel to Japan. While we still maintain a lead in polymers, we cannot afford to be complacent. We have learned that innovation and increased production efficiency can offset higher raw material costs.

THE COMPETITION:

Our principal competitors in "high tech" polymers are Japan, West Germany and France (Figure 10). I have had considerable interaction with Japan, where I have been a Fulbright Professor and gave visited for a month and a half last fall. Several of the principle polymer professors from Japanese universities have studied in my laboratory. The Japanese academic effort in polymer science is impressive. There are many excellent people and the area enjoys much greater importance in major Japanese universities than in the U.S. Here, the leading universities in polymer science (UMASS, Case Western-Reserve, Akron) are not the "name" universities as with them (Kyoto, Kyushu, Tokyo Inst. Tech.). There is a well-developed "pipeline" of highly trained students to industry, many of whom exhibit the enthusasm, loyalty, and intelligence that has led to the Japanese superiority in electronics and steel. University research is well supported by their government and industrial interaction is encouraged through organizations like the Ministry of International Trade and Industry (MITI).

West Germany is also making an impressive effort to augment its fine polymer research by establishing a new Max Planck Institute in Polymer Science in Mainz which is led by two principal professors (Wegner, Fischer) who have transferred from university positions. They are now constructing a building which exceeds our plans at UMASS and have gathered together a team of researchers from around the world which we can well envy. The strong German polymer producing companies (BASF, Bayer, and Hoechst) have made an important contribution to this effort.

While France is not one of the "big three" in polymer production, their research effort is also considerable. The CNRS organization has provided a chain of government supported laboratories, the principal one of which is in Strasbourg. France has been the leader in developing a "new school" in polymer physics, an area largely neglected in U.S. academic circles. The work is Nobel prize class and has been the inspiration for U.S. scientists. They have led the U.S. by 10 years in developing the new technique of small angle neutron scattering which has led to a breakthrough in our understanding of polymer structure. The government funding of their effort in this field (as well as that by the U.K., scarcely an economic leader) exceeds ours by at least a factor of two. Their facility at Grenoble is far better than our best facility at Oak Ridge (which was started only at the strong insistance of a group of scientists in which I was involved).

Thus, if research effort is considered a hallmark of future industrial growth, the U.S. indeed faces some stiff competition. We have no well-funded government research facility in polymer science. The best is probably that at the National Bureau of Standards which is smaller than any of the above efforts and is periodically criticized as not representing the principal mission of the Bureau. Polymers is in the "poor sister" status in our principal universities and it has gained importance at a few, largely because of the efforts of a few individuals. The best students are passing up this area, so important to our economy, to go on to the better publicized and funded fields of biotechnology, molecular genetics, and computer science.

There has been no national focus on the problem. National Academy studies have been conducted (POLYMER SCIENCE AND ENGINEERING. CHALLENGES, NEEDS, AND OPPORTUNITIES, National Academy Press, 1981) but these have mainly been read by those already familiar with and sympathetic to the problem and have led to little action.

THE UNIVERSITY OF MASSACHUSSETS EFFORT:

The polymer program at the University of Massachusetts has gradually evolved over the past 35 years and has become an academic leader in the polymer community of the nation and the world (Figure 11). It represents one of the largest collections of polymer faculty (16), graduate students (over a hundred PhD candidates), and postdoctoral fellows and visiting scientists (about 30) at any university in the country. The faculty enjoy international esteem and are winners of the principal awards in the field. They represent Editors or Associate Editors of three of the leading journals. There is an excellent grpup of young faculty, and in the past three years, three have bsen designated to receive the Presidential Young Investigator award.

The UMASS program has developed in borrowed space with funding primarily derived from external sources, about 2/3 governmental and 1/3 industrial. It is the location of the first NSF supported Materials Reaearch Laboratory devoted primarily to polymeric materials and of the first NSF nucleated industry/university consortium, the Center for University-Industry Research in Polymers (CUMIRP). This has gone through the 5 year cycle of NSF assistance and is now completely funded at the rate of about $ 0.7 M per year by 18 leading polymer related companies. The Commonwealth of Massachusetts has recently lent its support by designating Amherst as the state's Polymer Center of Excellence and is a keystone of the Center of Excellence progam of the Commonwealth. To quote Ray Stata, (President of Analog Devices. Inc. and coauthor of The Innovators and Global Stakes, Harper and Rowe, 1984, 1982) on a paper presented at the Alden Seminar on April 8th, "Strengthening the Polymer Center at Amherst as a world class center is exactly correct."

THE PROPOSED CENTER:

The polymer development of the University of Massachusetts is now space limited.

I was told by our Dean a few days ago when obtaining his approval for a propsal which is being delivered today to NASA to obtain funding as a Center for the Commercialization of Space in Polymers, that he would sign it providing I promise not to ask him for any additional space for the next five years. While this will be very difficult, I have agreed to this condition since I believe space to be the next frontier, and that for the above stated reasons, polymeric materials will play a very important part. We cannot afford to wait!

Governor Dukakis, aided by then Secretary of Economic Affairs, Evelyn Murphy, have been very supportive of our efforts and have encouraged the Commonwealth's legislature to approve last year a $6M in capital funding toward providing more space. Conservative estimates indicate the need for at least 100,000 gross square feet costing an estimated $24 - 30 M (Figure 12).

While serving as a member of the panel for PROJECT 2000, a study commissioned last year by the Bureau of Mines of the Department of the Interior by Price Waterhouse, Inc. and the Institute for the Future on possible future problems that the country may face related to mining and minerals, I became convinced that the petroleum shortage is just "the tip of the iceberg". (I believe the present oil glut is an artificial temporary situation and the shortage will become increasingly serious.) Shortages will develop for many other critical materials, many of which are vital to our defence and industrial efforts, and many of which come to us from politically sensitive ares of the wotld (S. Africa, the Soviet block).

Polymers can play an important role in providing substitute materials and in decreasing our rate of consumption of critical materials by, for example, weight reduction of structures. Consequently, Mr. Conte has proposed the establishment of a Center for Strategic Materials Research in Polymers at the University of Massachusetts in Amherst to emphasize studies focussed on this problem. We appreciate the support of your committee in providing $10 M funding last year. It is our intent to combine this with the $6M from the Commonwealth to construct a much needed building. The University Administration has approved the initiation of planning for this. We believe that such a Center can provide the space necessary for our excellent group in Amherst to furnish services to meet this pressing national need (Figure 13).

It is necessary to supplement the presently available $16M in funding ($15,5 M after Gramm-Rudman) to construct the desired facility. We are hopeful that this may be done through a combination of additional state and federal funding and industrial support. We shall certainly appreciate any help that may be forthcoming.

CONCLUSIONS:

As pointed out in Figure 14, I believe that the establishment of a STRATEGIC MATERIALS RESEARCH CENTER emphasizing polymer research at the University of Massachusetts in Amherst should help the United States maintain its strategic and industrially competitive position in the field of POLYMERIC MATERIALS.

We are indebted to your committee for its support of this endeavor and shall welcome your continued interest.

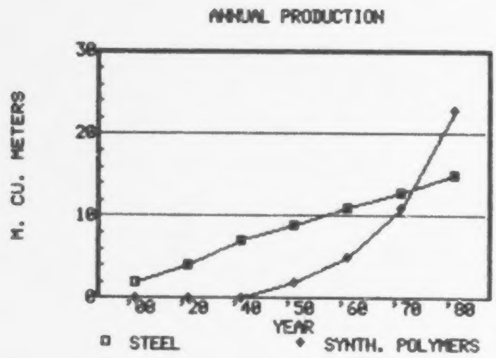


Fig. 1 - A Comparison of the Production (in Cubic Meters) of Steel and Polymers

Weight Saved in Automotive Parts by Substituting Polymers for Metals	
Part	Pounds Saved
Wheel	6
Light Truck Single Leaf Spring	20 - 30
Hood	6
Bumper	12
Tailgate	14
Deck Lid	8

Fig. 2 - Estimated Weight Savings by Replacing Variius Metal Automotive Parts with Polymeric Substitutes

Comparison of Specific Modulus and Tensile Strength of Various Materials

MATERIAL	SPEC. TENS. STR.	SPEC. MODULUS
ISOTROPIC		
Polystyrene	200 Km.	4 Km.
Polycarbonate	150	6
Glass	3,000	64
Steel (carbon)	2,500	6
ORIENTED		
Polyethylene (ultraoriented)	14,000	300
Kevlar - 49	9,000	270

Fig. 3 - A Comparison of Specific Modulus and Specific Tensile Strength of Various Materials

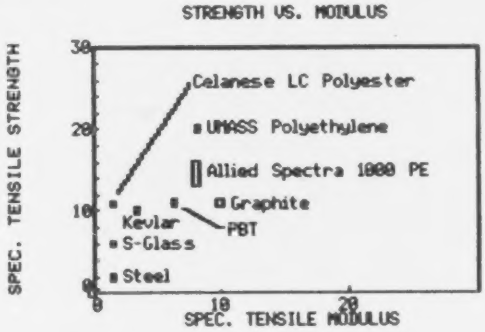


Fig. 4 - A Plot of Specific Tensile Strength Against Specific Modulus For Various Materials

> "Seven out of ten American high technology sectors have lost in world market since 1965 . . . areas that are losing ground include . . . plastics . . ."
>
> Research and Development, April, 1985

Fig. 5 - American Technology May Be In Trouble

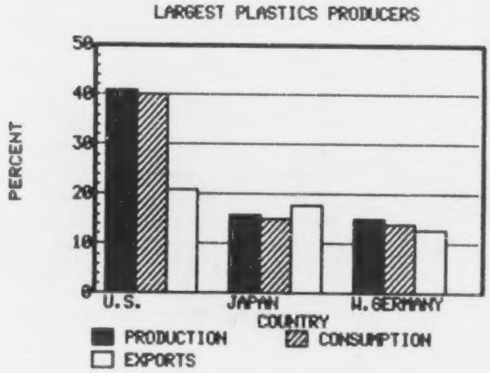


Fig. 6 The Ranking of U.S., Japan, and Germany in Plastics Production, Consumption, and Exports

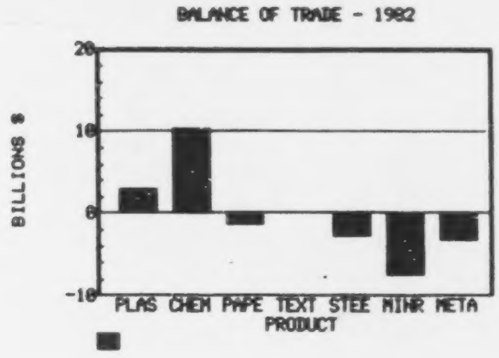


Fig. 7 - The U.S. Balance of Trade in Plastics, Chemicals, Paper, Textiles, Steel, Minerals, and Metals

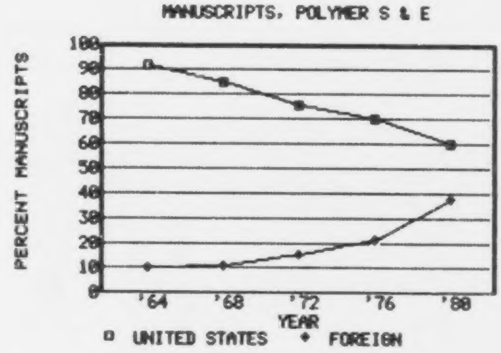


Fig. 8 - The Change in the Percentage of U.S. and Foreign Manuscripts Submitted to POLYMER ENGINEERING AND SCIENCE

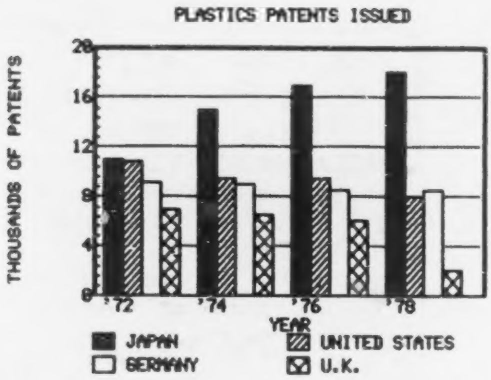
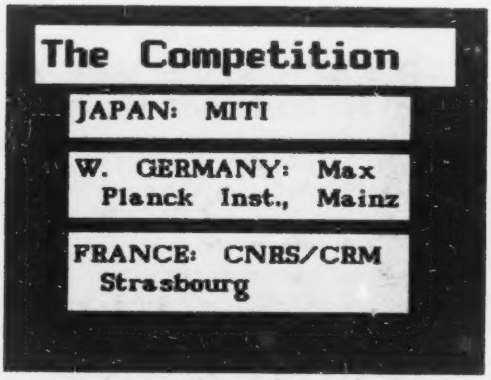


Fig. 9 - The Change in the Number of Patents Issued in the Plastics Field in the U.S., Germany, Japan and the U.K.



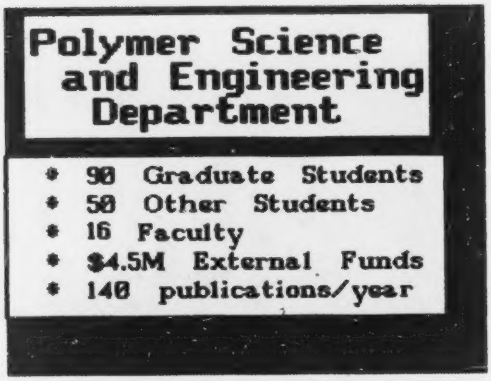
The Competition

JAPAN: MITI

W. GERMANY: Max Planck Inst., Mainz

FRANCE: CNRS/CRM Strasbourg

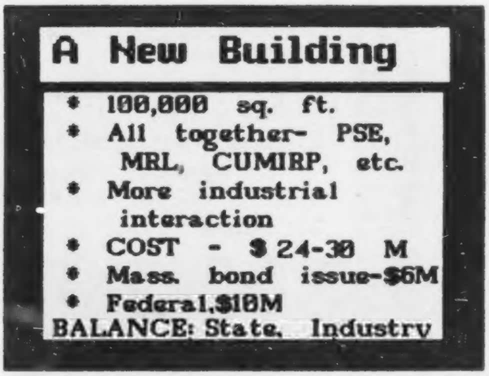
Fig. 10 - The Competing Polymer Research Organizations in Japan, West Germany and France



Polymer Science and Engineering Department

- 90 Graduate Students
- 50 Other Students
- 16 Faculty
- $4.5M External Funds
- 140 publications/year

Fig. 11 - Some Facts about the Polymer Science and Engineering Department at the University of Massachusetts in 1983

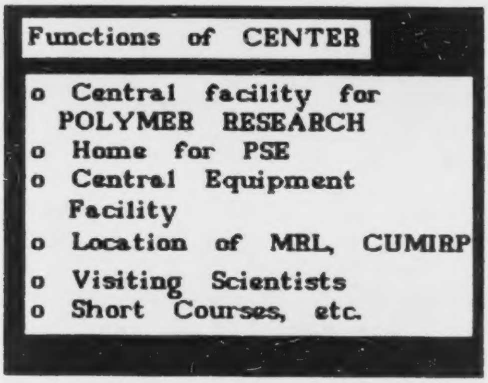


A New Building

- 100,000 sq. ft.
- All together- PSE, MRL, CUMIRP, etc.
- More industrial interaction
- COST - $ 24-30 M
- Mass. bond issue-$6M
- Federal,$10M

BALANCE: State, Industry

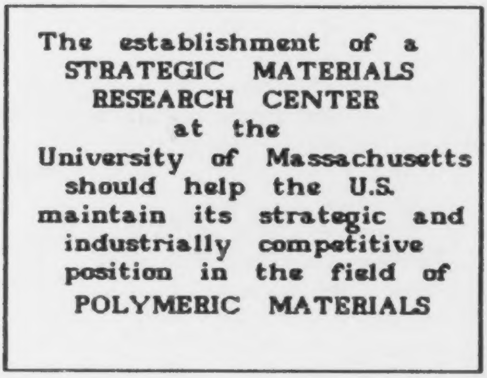
Fig. 12 - The Desired New Building for Polymer Science and Engineering at the University of Massachusetts



Functions of CENTER

- o Central facility for POLYMER RESEARCH
- o Home for PSE
- o Central Equipment Facility
- o Location of MRL, CUMIRP
- o Visiting Scientists
- o Short Courses, etc.

Fig. 13 - Some Functions of the Strategic Materials Research Center at the University of Massachusetts



The establishment of a STRATEGIC MATERIALS RESEARCH CENTER at the University of Massachusetts should help the U.S. maintain its strategic and industrially competitive position in the field of POLYMERIC MATERIALS

Fig. 14 - The Role of the Strategic Materials Research Center at the University of Massachusetts in the Nation's Economy

Mr. **Duffey**. Richard Stein has been at the University of Massachusetts for most of his career. He is a name recognized in this area across the world. I can remember sitting on a train in southern China with scholars from France, Germany, Japan, about three years ago, my wife and I. And discovering that we were from Amherst, Richard Stein was the one name they wanted to talk about. He will say a word in quick summary of the presentation we made earlier.

Mr. **Skeen**. Thank you, Chancellor. Dr. Stein, we are honored to have you here.

Mr. **Stein**. I join the Chancellor in giving its support. I would like to amplify some of the remarks that the Chancellor made and say a bit about what this is about. I think many of you are familiar with polymers and everyday items of this sort. A polymer is a long chain of molecules. I want to talk about high-technology applications of polymers that we are involved with which will be promising in providing a substitute for strategic materials. This chart shows the relative production of steel and polymers, indicating that polymer production is growing very rapidly, overtaking steel.

One of the principal reasons for that is weight saving. Polymer parts are replacing metals in automobiles, fuel, an example of the number of pounds saved by replacing metal parts of cars with polymers. In order to enable this to occur better, people are making polymers that are stronger than metals and glass and conventional materials.

Mr. **Skeen**. I am amazed you have spring leaves being replaced. I live in the country and it is very hard on springs. We have been buying them from Venezuela for Ford Motor Company.

Mr. **Stein**. They tested these polymer spring leaves on the streets of Baltimore and they outlasted metal. But comparing properties of polymers and metals, particularly oriented ones, you can see that the polymer strengths exceed metals by a considerable factor. This is properties based upon unit weight, so for a given weight of material you can produce a much stronger material with a polymer than a metal. We are familiar with keflar, used for reinforcement of fishing rods, bulletproof vests, things of this sort.

Now, if you compare—this is a plot of stiffness and strength, and steel is down here, glass is here, keflar here. Some of the newer generation materials, polymers, are here. The best material would be in that part of the diagram. So, for example, the Chancellor referred to the Air Force project. This is a new polymer developed by Wright Patterson that our group is working on. This is on the diagram and has an advantage over keflar, smelting point 100 degrees higher and strength 50 percent greater.

This is a polymer in which the chains are oriented very well and very strong in that direction and weak in that direction. Alloys are coming on the market with this material. This will be used for making the sales for the next America Cup Races. A professor in our laboratory has succeeded in making something better than that.

Mr. **Skeen**. These are derivatives of hydrocarbons?

Mr. **Stein**. That is right.

Mr. **Skeen**. Does that cause any problem in the strategic materials with the more or less limited amount of oil?

Mr. **Stein**. Not really, because only 2 percent of petroleum is used to make polymers. I have an illustration here that I think dramatizes it a bit. Here is a metal product and a polymer product. You can see the weight of this. Boeing estimates that it would be worth $300 for every pound saved on an airplane in fuel consumption.

I estimate the plastic, which is as good as the metal one in testing, is two ounces lighter. Two ounces out of a pound would mean you could save $40 over the life of a plane. That is a cost of five cents wholesale, so you could afford to buy 800 razors for the weight saving of the plane. Tell people not to bring razors on planes; give them razors free when they land. You would save more hydrocarbon than you do in making the polymer.

Mr. **Skeen**. We are getting to be a throwaway society.

Mr. **Stein**. You don't throw it away, you burn it. The fuel is there.

Mr. **Skeen**. We haven't taken it that one step further. I am a total recycle advocate.

Mr. **Duffey**. The airplanes we won't throw away.

Mr. **Stein**. The U.S. is first in polymer production and consumption, and it is a positive factor in balance of trade. Here are plastics and chemicals and metals, a negative balance of trade, so polymers are important for the economy. But the U.S. I think is in trouble. That is the percentage of U.S. papers submitted, percentage of foreign papers. Here is data on patents. The U.S. and Japan were equal in 1972. Today Japan is ahead. So I think we have to do something, so in many of the industries including polymers other countries are beginning to outdistance us.

The foreign competition is great. In Japan they are doing things extensively. Germany is building a world-class institution. France has their CNRS Systems. We don't have a national laboratory of this concept and polymer programs in the U.S. are not nurtured at the principal universities, they are places like U. Mass and Akron and Case Western Reserve—actually in the Southwest, the University of Texas at Austin. But what we had at the U. Mass is I think one of the two or three finest programs in the country and probably one of the five finest in the world.

We have over 150 people doing research, supported largely with outside funding. We have gotten this year $5 million in outside funding, a third from industry. We are tight on space, though, and this is the principal use that we want to make of the funds coming in.

Mr. **Skeen**. I have never seen a university yet that had enough space and I am glad that you don't.

Mr. **Stein**. This afternoon I am delivering a proposal to NASA and I am not going to ask them for any more space to work on this proposal for the next five years because he doesn't have anything to give me.

Mr. **Skeen**. Dazzle him with your presentation.

Mr. **Stein**. I think that what this facility should be is a central facility for polymer research to do more of the kinds of things that we are doing, and I think this should be a very important impact on strategic materials and on the economy of the country.

Mr. **Duffey**. A quick comment. I think in the cycle of investment in our society there is basic research and then applied research and then manufacturing and marketing. If we don't do the manufacturing and marketing, we get outstripped and don't get back the dividends. But the basic research at the university is the first step in the process. We have industries that have shown a good interest. They have begun to work with us.

What you have said to the Commonwealth of Massachusetts and to the industries is this basic research is important, it is important that it continue with the frontier research and as best as possible and we are grateful for the encourgement that the students—I know how quickly the members of our legislature feel they made a commitment. It is a matter of encouragement to us, so I thank you.

Mr. **Skeen**. We thank you, Chancellor, and Dr. Stein. This committee has had a great interest and shown a great deal of support both for strategic materials and things of this kind, because there is an interest among the membership that what you said is true, that it is time now that we shorten the span. It used to be between basic and applied, and the manufacturing and the high-tech transition of high tech into industries was strung out over a very unwieldly spectrum in the U.S., and I think our foreign competitors have shown us we need to tighten it up and have relationships so close that we know where we are going.

The Japanese do things in an amazing way. They take the very things that we discard and market the technology. They did it in fiber optics and other fields, and what we want are universities, but particularly we want to encourage the private sector, the industries, in knowing where this research is. We want to promote it and shorten up that linkage if we can provide a little seed without once again getting government into the regulation of how it is done.

You folks have done yourselves well, and I want to tell you how much I appreciate your efforts. I always love the show and tell because you don't really realize how much our technology depends on your research. Graphite structures were not a byword, but they are today. If you play tennis, golf, or sports, everything is made up of some kind of graphite materials, extremely strong and light.

Thank you for coming. I think we get far more return for the kinds of dollars we put into this kind of research.

Mr. **Duffey**. I have many friends on this committee, so I hope you express my appreciation.

Mr. **Skeen**. We surely will, and thank you all very much.

Tuesday, April 15, 1986.

FUNDING FOR THE TAX COUNSEL FOR THE ELDERLY PROGRAM

WITNESS

COLONEL R.T. GRUBBS, VOLUNTEER COORDINATOR, AMERICAN ASSOCIATION OF RETIRED PERSONS, DIVISION OF LEGISLATION, RESEARCH AND PUBLIC POLICY, FEDERAL AFFAIRS DEPARTMENT, WASHINGTON, DC

Mr. **Skeen**. Then we will go to the American Association of Retired Persons. Colonel Grubbs. Welcome.

Colonel **Grubbs**. I am Grubbs, volunteer coordinator from Virginia Beach, Virginia, the American Association of Retired Persons, representing the interests of 22 million Americans age 50 and older, who once again welcome the opportunity to testify before the Treasury, Postal Service and General Government Appropriations Subcommittee.

Our remarks will be brief and focus on continuing the funding for the Tax Counseling for the Elderly [TCE] Program in 1987.

At the outset, the association wishes to commend the subcommittee for its support of the TCE program during the past seven years, and particularly the decision to fund TCE at $2.2 million for fiscal year 1986. This will enable more older Americans to be assisted in having their tax returns prepared. The funding has also averted the need to return to the subcommittee for additional appropriations to eimburse program volunteers for their out-of-pocket expenses in this year's tax counseling season.

Fiscal 1987 Funding for Tax Counseling for the Elderly:

The administration's budget recommends the same $2.2 million figure for TCE for fiscal year 1987. Thus, funding would continue to be available at the same level for reimbursement of volunteer out-of-pocket expenses and other program costs. We urge the subcommittee to adopt the President's recommendation and to continue to fund TCE at $2.2 million for the coming year. Budgetary restrictions impose a duty on programs, such as TCE, to live within the limits imposed by the administration and Congress. However, the funding for TCE should be viewed against rising program costs because of the growing number of older Americans requesting help in preparing their returns.

The legislative history of this measure reveals that Congress intended that free tax counseling should be more readily available for additional elderly taxpayers because the number of older Americans would increase sharply in the years ahead. TCE has expanded dramatically since 1980, and has achieved a degree of acceptance in the elderly community that assures continuing increases in the number of applicants for the service into the future.

As the result of the $2.2 million appropriation by the Congress for TCE in fiscal year 1986, the Association's tax-aide/TCE program received a total contractual arrangement of $1.9 million. This money is being expended for increased program needs reflected in current tax counseling season activities. The major part of the funding goes to defray the out-of-pocket expenses of tax-aide/TCE volunteer coordinators, instructors and counselors. The request for funding for fiscal year 1987 should be viewed against the growing numbers of elderly, handicapped and shut-in applicants needing free tax assistance.

There are clear explanations for this increased demand for the service. During the past several years, Congress has enacted major laws that have substantially changed the tax rules affecting aged and aging Americans. Again this year, major tax revision legislation is under consideration, which may substantially change the income tax rules and procedures.

Many elderly are still not fully aware of these proposed tax changes and how they affect their own tax situations. They will come to the tax-aide/TCE sites in larger numbers during the next tax counseling season (February 1 to April 15) seeking information and assistance in understanding the tax changes that will probably be enacted this year.

At over 7,800 tax-aide/TCE sites, the program will assist them by preparing their income tax returns free of charge.

The tax-aide program, now in its eighteenth year, has become virtually institutionalized as an outreach service in communities throughout the country. The elderly, the handicapped, and shut-ins rely on this valuable counseling by volunteers whose only reward is the service they can perform for their fellow citizens. From 850,000 tax returns prepared or assisted in 1980, the program has grown to more than 1.56 million returns this year.

The IRS has repeatedly stressed that no taxpayer should pay more than that which is legally required. Congress recognizes that many elderly persons overpay their taxes each year or file when not required to do so. Some are confused by the tax forms. Others are unaware of available deductions, credits and exemptions meant to benefit the elderly. The tax-aide program assists many categories of inquirers, including those who need to file amended returns to claim deductions that they overlooked or to pay additional tax on income that was not reported.

The majority of the tax-aide/TCE clients have low or limited incomes. They are unable to afford the services of professional preparers for their routine returns. Those who have complicated tax situations are advised to seek professional tax assistance in preparing their returns. In recent year, the IRS has referred numerous taxpayers to tax-aide/TCE sites to receive assistance not always available at government offices. This is attributed primarily to the limited capabilities of some IRS offices to handle public inquiries because of budgetary restraints.

In addition, tax-aide/TCE volunteer instructors are increasingly assuming TCE training responsibilities throughout the country, to relieve IRS trainers of this responsibility. The majority of tax-aide volunteer counselors are now trained by instructors from within the program. As a consequence of the high capabilities of volunteer instructors, tax-aide counselors received more in-depth instruction and frequently develop a better knowledge of the tax code. The result is better service for older Americans.

Without the continuation of funding at $2.2 million, it would not be possible to assure that the tax-aide/TCE program will fulfill its obligations and promises to the volunteers who are incurring expenses in training and counseling activities. Nor would it be possible to assure that increased numbers of applicants would be provided with the tax assistance that new tax law changes may compel them to seek.

The immediate goals of the tax-aide program for 1987 are to increase the number of returns completed and assisted to well above the 1.5 million mark. As the number of volunteers increases beyond 25,000 nationally, the program can expand into more communities, both urban and rural, and provide assistance to large numbers of handicapped and shut-in individuals.

In 1985, the total number of shut-ins served by the tax-aide program was 29,000. An additional 35,000 persons were assisted at special sites, including hospitals, nursing homes and senior housing.

TCE has increased taxpayers' accuracy and compliance. It has provided specialized free service for groups traditionally underserved, including minorities and the rural aged.

TCE has been beneficial for our nation's communities, the elderly and the IRS.

And it has developed in our people a spirit of volunteerism that increasingly makes possible the extension of government services throughout our communities at a minimal cost to our nation. AARP urges your continued support of the tax counseling program for the elderly.

Thank you.

[The statement of Colonel Grubbs follows:]

Comments on FY 1987 Treasury-Postal Service and General Government Appropriations Bill

Before the
House Appropriations Committee
Subcommittee on Treasury-
Postal Service and General Government

Submitted by

American Association of Retired Persons
Division of Legislation, Research and Public Policy
Federal Affairs Department
1909 K Street, N.W. Suite 600
Washington, D.C. 20049

April 15, 1986

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The legislative history of this measure reveals that Congress intended that free tax counseling should be more readily available for additional elderly taxpayers because the number of older Americans would increase sharply in the years ahead. TCE has expanded dramatically since 1980, and has achieved a degree of acceptance in the elderly community that assures continuing increases in the number of applicants for the service into the future.

As the result of the $2.2 million appropriation by the Congress for TCE in FY 1986, the Association's Tax-Aide/TCE program received a total contractual arrangement of $1.9 million. This money is being expended for increased program needs reflected in current tax counseling season activities. The major part of the funding goes to defray the out-of-pocket expenses of Tax-Aide/TCE volunteer coordinators, instructors and counselors. The request for funding for FY 1987 should be viewed against the growing number of elderly, handicapped and shut-in applicants needing free tax assistance.

There are clear explanations for this increased demand for the service. During the past several years, Congress has enacted major laws that have substantially changed the tax rules affecting aged and aging Americans. Again this year, major tax revision legislation is under consideration, which may substantially change the income tax rules and procedures. Many elderly are still not fully aware of these proposed tax changes and how they affect their own tax situations. They will come to the Tax-Aide/TCE sites in larger numbers during the next tax counseling season (February 1 to April 15) seeking information and assistance in understanding the tax changes that will probably be enacted this year. At over 7,800 Tax-Aide/TCE sites, the program will assist them by preparing their income tax returns free of charge. The Tax-Aide program, now in its eighteenth year, has become virtually institutionalized as an outreach service in communities throughout the country. The elderly, the handicapped, and shut-ins rely on this valuable counseling by volunteers whose only reward is the service they can perform for their fellow citizens. From 850,000 tax returns prepared or assisted in 1980, the program has grown to more than 1.5 million returns this year.

The IRS has repeatedly stressed that no taxpayer should pay more than that which is legally required. Congress recognizes that many elderly persons overpay their taxes each year or file when not required to do so. Some are confused by the tax forms. Others are unaware of available deductions, credits and exemptions meant to benefit the elderly. The Tax-Aide program assists many categories of inquirers, including those who need to file amended returns to claim deductions that they overlooked or to pay additional tax on income that was not reported.

The majority of the Tax-Aide/TCE clients have low or limited incomes. They are unable to afford the services of professional preparers for their routine returns. Those who have complicated tax situations are advised to seek professional tax assistance in preparing their returns. In recent years, the IRS has referred numerous taxpayers to Tax-Aide/TCE sites to receive assistance not always available at government offices. This is attributed, primarily to the limited capabilities of some IRS offices to handle public inquiries because of budgetary restraints.

In addition, Tax-Aide/TCE volunteer instructors are increasingly assuming TCE training responsibilities throughout the country, to relieve IRS trainers of this responsibility. The majority of Tax-Aide volunteer counselors are now trained by instructors from within the program. As a consequence of the high capabilities of volunteer instructors, Tax-Aide counselors received more in-depth instruction and frequently develop a better knowledge of the tax code. The result is better service for older Americans.

Without the continuation of funding at $2.2 million, it would not be possible to assure that the Tax-Aide/TCE program will fulfill its obligations and promises to the volunteers who are incurring expenses in training and counseling activities. Nor would it be possible to assure that increased numbers of applicants would be provided with the tax assistance that new tax law changes may compel them to seek. The immediate goals of the Tax-Aide program for 1987 are to increase the number of returns completed and assisted to well above the 1.5 million mark. As the number of volunteers increases beyond 25,000 nationally, the program can expand into more communities, both urban and rural, and provide assistance to large numbers of handicapped and shut-in individuals. In 1985, the total number of shut-ins served by the Tax-Aide program was 29,000. An additional 35,000 persons were assisted at special sites, including hospitals, nursing homes and senior housing.

TCE has increased taxpayers' accuracy and compliance. It has provided specialized free service for groups traditionally underserved, including minorities and the rural aged.

TCE has been beneficial for our nation's communities, the elderly and the IRS.

And, it has developed in our people a spirit of volunteerism that increasingly makes possible the extension of governmental services throughout our communities at a minimal cost to our nation. AARP urges your continued support of the Tax Counseling program for the elderly.

B. Revenue Foregone

Mr. Chairman, the Association further urges the Subcommittee to approve full funding for revenue foregone for private, nonprofit organizations for FY 1987. This would require $833.2 million. Of this total, $774.235 million would actually be available to reimburse the U.S. Postal Services for services to blind persons and the reduced rate mail for nonprofit sponsors. The remaining $58.976 million represents a reconciliation adjustment based on audited FY 1984 volumes.

Congress created the postal subsidy, in large part, because private, nonprofit organizations complement or even substitute for publicly funded government activities at all levels--federal, state, and local. The workload and cost for governmental agencies would be greatly increased if the private, nonprofit sector did not deliver a considerable portion of supportive services. These services, in many cases, enable the recipient to live independently and without the necessity of seeking help from governmental programs. Thus, governmental units recognize savings, either directly or indirectly, from the activities of private, nonprofit organizations.

Many of these services, though, would be sharply curtailed or perhaps eliminated totally if Congress does not provide funding for the revenue foregone appropriation. Reduced postal rates have enabled private, nonprofit organizations to devote more resources to charitable, educational, and other beneficial public activities. We believe that it is sound public policy to promote these activities by the private sector through the establishment of reduced postal rates.

This rationale becomes even more compelling now. Funding for supportive services has been cut markedly in recent years. Supporters of these reductions have often maintained that the private sector could pick up the slack. These funding cutbacks will be even more pronounced as the Gramm-Rudman-Hollings balanced budget amendment becomes fully effective.

The bottom line is that the private sector will be asked to do more to complement government activities. However, it is absolutely essential for private, nonprofit organizations to have access to a mail system at a reasonable and affordable cost in order to fill these gaps.

The private, nonprofit sector is already reeling from the effects of three significant postal rate hikes since February 17, 1985. Two of these have already occurred this year alone. For example, the rate for third class nonprofit mail has jumped by 67 percent, from 5.2 cents prior to February 17, 1985 to 8.7 cents currently. Similarly, a 67-percent hike has occurred for 5-digit presort mail, from 4.3 cents to 7.2 cents. Carrier route presort mail has risen by a whopping 73 percent in slightly more than a year, from 3.3 cents to 4.7 cents currently.

Elimination of the revenue foregone appropriation or a substantial reduction for the postal subsidy will, in our judgement, be counterproductive. It will not only affect the ability of the private sector to deliver services by driving up operating costs, but it will also impede efforts to raise funds to carry out these activities.

The 1970 Postal Reorganization Act and subsequent amendments established a permanent funding mechanism for the "continuing appropriation" for the revenue foregone postal subsidy. This was designed to insulate nonprofit mailers from substantial hikes in mailing costs. The underlying philosophy for this measure was that postal rate increases for nonprofit mailers should be both predictable and moderate.

This philosophy made good sense then, and it does now--especially during a period when federal support for services is diminishing while the public demand is increasing. For these reasons, we strongly reaffirm our support for full funding for the revenue foregone appropriation.

Mr. **Skeen**. Thank you.

I notice in your text you also have a statement on revenue foregone.

Mr. **Affeldt**. That will be inserted in the hearing record, in the interest of time.

Mr. **Skeen**. The subcommittee is strongly in support. The TCE provision is a taxpayer service and more or less earmarked $2.2 million out of IRS funding each time. What does one have to do to qualify for that service? Do you have to be a member of AARP or any retirement group, or just anyone of a certain age qualifies?

Colonel **Grubbs**. The IRS says 60 and above, but the people that come in you don't say, "Are you 60?" We go ahead and give them help.

Mr. **Skeen**. Has it been a good service?

Colonel **Grubbs**. It has, and it is very popular, the word of mouth spreads it.

Mr. **Skeen**. I am assuming that this is not the only taxpayer service that we fund out of this fund, is it?

Mr. **Smith**. No, sir. IRS has a service, too.

Mr. **Skeen**. IRS also provides instructor personnel?

Colonel **Grubbs**. They have in the past. We are bringing in more and more volunteer instructors and relieving the IRS of that, and many times they are not available.

Mr. **Skeen**. It sounds like a very good program. We thank you very much for your testimony. It will be entered in full in the record.

Tuesday, April 15, 1986.

REVENUE FOREGONE POSTAL SUBSIDY

WITNESS

JOSEPH E. MILLER, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. **Skeen**. Joseph Miller of the American Legion will next present his testimony to the committee.

You may proceed.

Mr. **Joseph E. Miller**. Mr. Chairman, the American Legion also wishes to express its sorrow about Representative Addabbo. We have a long association with him as subcommittee chairman of the Appropriation Defense committee, and we will miss him. We would like you to extend our congratulations to the chairman for the honor recently bestowed upon him by the California State University of Los Angeles, the endowment. Our association indicates that there is no person we could think of more deserving of this honor.

Mr. **Skeen**. We agree, and will forward that.

Mr. **Joseph E. Miller**. This is the fourth time in as many years that we have been able to appear before this subcommittee on the subject of postal appropriations. During this time, because of your work, nonprofit organizations have enjoyed the longest period of stabilized postage rates since the signing of the 1970 "Postal Reorganization Act."

This subcommittee's efforts to insure that those served by nonprofit organizations would not suffer unduly as a result of increased mail costs have, in large part, been successful. We recognize that this has been a difficult task to achieve in light of the administration's continued efforts to delete funds for this account.

We feel that the subcommittee deserves commendation for the success that they have been able to develop in this area. Unfortunately, Gramm-Rudman and the escalation of other costs associated with handling preferred rate mail have resulted in postage costs that have increased more than 70 percent since the beginning of this year and preferred mail rates are now above step 16. These increases have eroded the cushion that nonprofit organizations built up during the period of postage rate stability.

On top of this, the administration's fiscal year 1987 budget requests would end preferred rate mail except for the blind and the handicapped. Certainly, we understand the administration's desire to reduce the federal deficit, but we do not think that deleting the postal subsidy is a well-reasoned or prudent move.

Last year, in the "Fiscal Year 1986 Reconciliation Act," the U.S. Postal Rate Commission was instructed to hold a series of hearings to determine who uses and who benefits from subsidized categories of mail; the content and frequency of subsidized mailings; how eligibility might be limited to reduce advertising and promotional use of subsidized rates; how the scope or amount of postal subsidies could be curtailed; and, how mailing practices would be adjusted if no longer subsidized through preferred rates.

Recently, the American Legion had the opportunity to appear before the Postal Rate Commission during its opening hearing and discuss the impact of increased postage costs on publications at all levels of Legion activity. In addition, we provided the PRC with our assessment of how to preserve rate stability while reducing the level of appropriations needed to subsidize preferred rate mail. We think that you will find our PRC testimony informative and ask that it be included as part of the official record of these proceedings. Additional Legion testimony will be presented during four of the PRC's field hearings.

I would like to paraphrase the remainder of my statement, if I may.

Mr. Skeen. Certainly.

Mr. Joseph E. Miller. We know that there is a big discrepancy—we know that the administration has requested $40 million for revenue foregone, and the Postal Service needs $873 million, a big difference. Last year Chairman Roybal asked us for a copy of a bill that we had proposed that would in part offer a solution to this. We ask at this time—we have provided the chairman with a copy of that. We have got some good feedback on it. We ask that a copy of it also be included in the record.

[The information follows:]

Postal Reorganization Act Amendments of 1985

A Bill

To amend Title 39, United States Code, to provide for rate stability of non-profit and preferred rate classes of mail; to stabilize existing rates; to set forth guidelines for the equitable distribution of limited resources, and for other purposes.

This Act may be cited as the "Preferred Postage Rate Amendments Act of 1985".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provision of Title 39 U.S.C. are hereby amended:

SECTION 102

Section 102 is amended by adding the following subsections:

(4) public welfare has here the same meaning as found in Title 42;

(5) public assistance for the purposes of this title means;

- (a) direct aid to beneficiaries; or
- (b) volunteer community assistance; or
- (c) service to beneficiaries through a recognized organization or sub-organizations providing training and or employment counseling; government benefitcounseling; non-profit and or low fee day care for senior citizens or children of

working adults and; transportation services at minimal or at no cost for the handicapped, and or elderly.

Section 3626 (a) (1) is amended to read as follows: delete, "and indirect" following the word direct.

Section 3626 (a)(d) (1) is amended to read as follows: delete the period after livestock(.) and add "and which are not organized for profit".

Section 3626 (a) (d) (2) is amended to read as follows: delete the period after "pursuits." and add the following "and which are not organized for profit."

Section 3626 (a) (3) is amended to read as follows after the period ending "...at such rates":

Nor shall any organization be entitled to mail such matter at the rates provided under this section unless that organization meets such minimum requirements as may be developed by the United States Postal Service and the Department of the Treasury in order to insure that only those organizations contributing to the public welfare through direct forms of public assistance sufficient to offset the difference between the cost of mail matter at regular rates and the preferred rates then in effect. Subentities of non-profit and other preferred rate mailers shall be eligible to mail at the rate permitted the parent organization provided that such mailing not be used primarely to sell; offer for sale; or in any way dispose of merchandise or services available through commercial sources except that this provision shall not apply to advertisements inserted in periodical publications where all other requirements and provisions have been complied with. Nor shall any mailing by any preferred rate mailer be permitted which is intended to act as a sales vehicle of any kind offering for sale, to sell, or otherwise dispose of merchandise or services available through commercial sources, except that space in periodical publications of non-profit organization sold to for profit entities shall not be considered a prohibited activity under this or any other section.

PERMANENT RELATIONSHIP OF PREFERRED TO COMMERCIAL RATES

Sec. 3 Section 3626 of title 39, United States Code, is amended to read as follows:

A. the rate or rates of postage for each class of mail or kind of mailer under former sections 4358, 4452 (b) and (c), and 4554 (b) and (c) of this title shall be adjusted at the same time other rates are changed under this chapter. Such adjustments shall preserve the percentage relationships which each such rate for mail under such former sections bore as Septeber 1, 1984 to the respective comparable rate in effect under this chapter which would apply to such class or kind if this section did not apply. Such adjustment shall provide for rounding each rate adjusted under this subsection to the same decimal to which such respective comparabe rate is rounded.

SEC 3627 of title 39, United States Code is amended to read as follows:

Sec. 1 The Post Master General shall within six months (6 months) of the enactmentof this provision cause to have delivered to the Congress of the United States a detailed breakdown of assigned attributable and unassigned institutional costs for all classes preferred rate mail matter under former sections 4358, 4359, 4421, 4422, 4452, or 4454 of this title, as such rates existed on September 1, 1984 and shall likewise cause to be delivered to the Congress a breakdown of all assignable costs and their percentage of assignment to the variouse classes of mail matter described above in effect on September 1, 1984 and such previous years as may be designated elsewhere in this report including all formulas for making such determinations and such reports shall consist of charts, tables and other documentation as may be required to present the information in such a manner that the figures for each year shall be easily compared to the figures in the preceeding years 1979,1980 1981, 1982, 1983 if the assigned attributable costs, in any way differ from the attributable costs assigned on September 1, 1984, or if such change in attributable costs is anticipated in out years beyond September 1, 1984, be either the United State Postal Rate Commission or the United States Postal Service.

A. Upon receipt of the report Congress shall determine those costs which it shall deem attributable for the purposes of maintaining rate stability and in no case shall the Board of Governors of the United States Postal Service or the Postal Rate Commission include, for purposes of determining rates after such Congressional action, any costs not so found by the Congress to be attributable to the handling of preferred rate mail. When there is sufficient evidence to indicate that further costs should be assigned or that the percentage allocation in existence on September 1, 1983 should be altered the United States Postal Rate Commission shall deliver to the BOard of Governors of the United States Postal Servcie all such documentation for delivery to the Congress who shall have the exclusive right to determine whether such additional attributable costs or increases in percentage allocations of attributable costs shall be allowed, but in no way shall this amendment prohibit the United States Postal Rate Commission and or the Board of Governors of the United States Postal Service from reducing such percentage of attributable costs which may no longer have applicability to the rate or rates in question.

B. At no time without express Congressional approval shall the percentage differentation between the applicable Commercial rate and the coresponding preferred rate for those classes of mail set forth above exceed the percentage differentation in effect on September 1, 1984 so that at all times the difference in rates between commercial mail matter and preferred rate mail matter as described above shall remain constant.

Mr. **Joseph E. Miller**. Basically what that would do would be provide a public service standard. We think that organizations who benefit from taxpayers' funds ought to be able to demonstrate that they are providing a service directly related to that funding. The Legon feels that a reasonable subsidy level, when combined with this kind of activity—that might be $300 or $400 million; we would have to look at that—would enable deserving preferred ratepayers to preserve their essential mailing communications.

By setting a public standard that is measurable and quantifiable immediate reductions in outlays can be achieved because nonprofit organizations unwilling or unable to comply with the standard would lose their preferred rate mail privileges. This action would not affect their nonprofit status since their activities would still be in the public interest, but the more stringent requirement that an organization demonstrate and quantify its public service would insure that only those organizations truly deserving of federal support would receive assistance in the form of reduced postage costs.

I will be happy to respond to any questions that you might have regarding this, and I would ask that the accompanying attachments also be included as part of the hearing record.

Mr. **Skeen**. If there is no objection, that will be so ordered.

[The statement of Mr. Joseph E. Miller follows:]

Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

by

JOSEPH E. MILLER, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION

before the

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE
AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

on

REVENUE FOREGONE POSTAL SUBSIDY

April 15, 1986

Mr. Chairman and distinguished members of the House Appropritations Subcommittee on Treasury, Postal Service and General Government. The American Legion appreciates the opportunity to present its views relative to the Revenue Foregone postal subsidy. This is the fourth time in as many years that we've appeared before this subcommittee on the subject of postal appropriations. During this time, because of your work, nonprofit organizations have enjoyed the longest period of stabilized postage rates since the signing of the 1970 "Postal Reorganization Act". This subcommittee's efforts to insure that those served by nonprofit organizations would not suffer unduly as a result of increased mail costs have, in large part, been successful. We recognize that this has been a difficult task to achieve in light of the Administration's continued efforts to delete funds for this account. Your successes deserve commendation. In particular, Mr. Chairman, we would like to extend our gratitude and thanks for the leadership you've demonstrated on this important issue.

Unfortunately, Gramm-Rudman and the escalation of other costs associated with handling preferred rate mail have resulted in postage costs that have increased more than 70 percent since the beginning of this year and preferred mail rates are now above step 16. These increases have eroded the cushion that nonprofit organizations built up during the period of postage rate stability. On top of this, the Administration's FY '87 budget request would end preferred rate mail except for the blind and the handicapped. Certainly, we understand the Administration's desire to reduce the federal deficit, but we do not think that deleting the postal subsidy is a well-reasoned or prudent move.

Last year, in the "FY '86 Reconciliation Act", the U.S. Postal Rate Commission was instructed to hold a series of hearings to determine who uses and who benefits from subsidized catagories of mail; the content and frequency of subsidized mailings; how eligibility might be limited to reduce advertising and promotional use of subsidized rates; how the scope or amount of postal subsidies could be curtailed; and, how mailing practices would be adjusted if no longer subsidized through preferred rates. Recently, The American Legion had the opportunity to appear before the Postal Rate Commission during its opening hearing and discuss the impact of increased postage costs on publications at all levels of Legion activity. In addition, we provided the PRC with our assessment of how to preserve rate stability while reducing the level of appropriations needed to subsidize preferred rate mail. We think that you will find our PRC testimony informative and ask that it be included as part of the official record of these proceedings. Additional Legion testimony will be presented during four of the PRC's field hearings.

As you know Mr. Chairman, there is a great discrepancy between the Administration's FY '87 budget request for the postal subsidy and the amount that the U.S.P.S. Board of Governors says that it needs to maintain rates at step 16. For FY '87, the Administration has requested just over $40 million which would be used to continue funding free and reduced rate mail for the blind and the handicapped. The Board of Governors, on the other hand, has announced that it will need $833 million to fund the Revenue Foregone account during the upcoming fiscal year. The Governors have also requested an additional $40 million as a reconciliation adjustment for prior-year shortfalls from handling free and reduced rate mail. In total, the Postal Service estimates that it will need $873.3 million to maintain step 16 rates during the next fiscal year.

It seems clear to us that the results of the PRC study are going to be crucial to the continued existence of preferred rate mail. We therefore encourage you to press the PRC for their answers to the report's questions at the earliest possible opportunity. There are several reasons why we feel that this report will be invaluable. First, it should provide a blueprint for reducing postal subsidy appropriations while maintaining the current level of assistance to Americans and communities in need. Second, the report should be able to tell us whether there are abusers of nonprofit mail as some suspect. Third and lastly, it seems equally clear that one of the results of Gramm-Rudman will be that this subcommittee is not going to have the funds available to subsidize preferred rate mail at the level of appropriations being requested by the Postal Service. Despite the drawbacks of Gramm-Rudman, the Legion feels that a reasonable subsidy level when combined with a public service standard will enable deserving preferred rate mailers to preserve their essential mail communications. By setting a public service standard that is measurable and quantifiable immediate reductions in outlays can be achieved because nonprofit organizations unwilling or unable to comply with the standard would lose their preferred rate mail privileges. This action would not affect their nonprofit status since their activities would still be in the public interest, but the more stringent requirement that an organization demonstrate and quantify its public service would insure that only those organizations truly deserving of federal support would receive assistance in the form of reduced postage costs.

Last year, as requested by you, Mr. Chairman, we provided this subcommittee with a copy of a legislative remedy that we felt would achieve both reductions in outlays and retain the nonprofit mailing privileges for organizations that can demonstrate and quantify their public service. Indeed, Mr. Chairman, the courts have already ruled that Congress has wide latitude to subsidize the activities of some groups while not subsidizing similar activities in other groups. This public service should also be a matter of public record. We would suggest that any organization that is unwilling to document its level of public service, be precluded from using subsidized mail.

We would like to make one final point. Some individuals and groups that have seen our legislative proposal have asked whether we would seek to revoke their tax exempt status because they could not document their public service. Mr. Chairman, nothing could be further from the truth. The American Legion has no position on the many types of nonprofit operations permitted by law. Indeed, the matter of tax exemption is a separate issue and substantially different than subsidized mail rates. However, it is the Legion's position that if taxpayers are to bear the expense of subsidizing the mail costs of certain organizations, then it is reasonable and proper to expect to receive a measureable benefit from the subsidies.

Mr. Chairman, that concludes our statement and we will be happy to respond to any questions that you may have.

STATEMENT OF

THE AMERICAN LEGION
1608 K Street, N.W.
Washington, D.C. 20006

by

Daniel S. Wheeler
Publisher/Editor-in-Chief
THE AMERICAN LEGION MAGAZINE

on

REVENUE FORGONE APPROPRIATIONS

March 12, 1986

Madam Chairman, and distinguished members of the Postal Rate Commission:

The American Legion would like to thank you for this opportunity to present our views on an issue we consider to be of national import. That issue centers on whether the Revenue Forgone postal subsidy should be continued and, if so, for the benefit of whom and at what level of funding.

Your recommendations to Congress regarding this will potentially affect not only the 870,000 tax-exempt organizations in the United States, of which The American Legion is a significant representative, but also the hundreds of thousands of American citizens who are beneficiaries of the services provided. Key to The American Legion continuing its public-service programs at current levels of participation and funding is its ability to afford to communicate with members via the United States Postal Service.

As we understand it, this Commission has been tasked with examining principal areas of Congressional concern regarding the continuation of Revenue Forgone and the extension of preferred rates to nonprofit mailers. The American Legion has been a grateful recipient of nonprofit mailing rates for many years. We believe our experience in this regard may well be pertinent to your deliberations, especially as it applies to the services we have been able to provide the nation as a result of what was considered a farsighted and cost-effective national postal policy.

We believe that once Congress has weighed the benefits derived from Revenue Forgone expenditures relative to what they cost taxpayers, it will agree with our position that a reasonable level of Revenue Forgone appropriations should be continued.

Two of the questions posed by this Commission -- "Who uses and who benefits from preferred mailing rates?" and "How can the scope or amount of postal subsidies be curtailed?" — we believe are interrelated. In preparation to answering those questions, as well as others posed, we should like to provide pertinent information concerning how postal rate increases have affected The American Legion; the benefits realized as a result of Revenue Forgone; and the actions The American Legion has taken to curb our ever-increasing mailing expenses, while cooperating fully with the Postal Service.

At the time of passage of the Postal Reorganization Act of 1970, The American Legion Magazine, our national publication, was paying approximately $180,000 a year to mail 12 issues to each of our nearly 2.7 million members. In 1986, only 16 years later, we will pay $2,200,000 for the same service, despite Postal Service automation, utilization of presortation discounts, and a change to a lower class mailing permit.

Even when measured over the period of a decade and a half, that is an astonishing increase. Perhaps a portion of that increase can be rightly attributed to a beginning rate that was unrealistically depressed. We do not believe, however, that rates in recent years have been unrealistically depressed, and we are, therefore, at a loss to understand how our government can expect us to continue to absorb increases of the magnitude experienced in recent years.

For example, based on a pressrun of 2,690,000 copies, the cost of mailing a 60-page issue of The American Legion Magazine in January 1985 was $102,608. To mail the same sized issue to the same number of people in March 1986 will cost $175,067 — an increase of 70 percent in just 14 months! Moreover, our postal bill in 1986, for the magazine alone, will be 87 percent higher than in 1984.

Our American Legion Auxiliary, which has a monthly magazine serving its 1 million members, is facing similar increases. And, already both The American

Legion Magazine and The National News each pay in excess of 23 percent of their respective publication budgets in postal expense.

Madam Chairman, we submit that no publication, much less those of nonprofit organizations, can be expected to absorb such mammoth increases in such a short period without suffering fiscal trauma. And, in the absence of a continuation of Revenue Forgone, the end of these debilitating rate increases is not yet in sight.

Some have suggested that increased postal expenses can be passed along to our advertisers and subscribers. That is true, to some extent, when referring to for-profit publications; however, the advertising potential of for-profit publications is not available to either The American Legion Magazine or The National News. These are organizational publications used primarily for the dissemination of Legion-specific information and analysis of national public policy issues related to fulfillment of our mandates. Our memberships span the spectrum of incomes and interests, and do not readily lend themselves to the type of demographic and income targeting so prevalent in the advertising world today. Further, even at our current depressed advertising rates, we are encountering strong price resistance from our primary class of advertiser, the mail-order industry. Advertising linage itself has been declining for a decade.

That leaves only our primary source of income, subscription revenue, which is part of the dues structure of both The American Legion and its Auxiliary. This dues structure is not amended easily, and any modification must be approved by the duly elected delegates assembed in National Convention. Even if acted upon favorably by a National Convention, a time lag of 18 months will ensue before any increased monetary returns will be forthcoming to either national magazine.

When faced with such postal increases as we have experienced in recent years — in fact, twice in the past three months — we have one alternative only: channel monies from program areas to pay current publishing expenses. Even when there is adequate time to budget for increases, our revenue sources are so restricted that the bulk of dollars to cover additional expenses must be diverted from our program areas.

The American Legion Magazine, of course, is not the only item mailed from our National Headquarters at preferred rates. Attached to this report is a sample of lesser circulation publications, as well as information concerning their circulation and frequency, as you requested. Additionally, dues renewal notices and other information items are periodically mailed to our membership. All told, we have experienced a 228 percent increase in postal expenses overall at the national level within the past 10 years.

But that reflects only a portion of the problem. The American Legion also has 58 departments (comprising the 50 states, District of Columbia, and seven foreign nations) and nearly 16,000 community-level posts, as well as 12,000 Auxiliary units nationwide. All have felt the impact of rising postal rates; many to the point that their newsletters and department newspapers have either cut back drastically or ceased publication. Such actions cripple communications at the community level, making it all the more imperative that publications such as The American Legion Magazine remain strong.

In an effort to survive spiraling postal rates, The American Legion Magazine has taken steps to help minimize damage and lessen financial constraints placed on other important Legion programs. Among actions taken are the following:

- In 1981, The American Legion enacted a per capita dues increase and allocated an additional $1 per member to the magazine, bringing that assessment to $2.50 per year, a 66 percent increase.

- The magazine cut the basis weight of an already lightweight cover stock from 70 pounds to 60 pounds, and the basis weight of body stock from 40 pounds to 35 pounds. This effected an annual postage savings of about 10 percent.

- In 1982, in the face of intolerable increases, the magazine gave up its second-class nonprofit permit in favor of a third-class nonprofit permit. This slowed delivery service somewhat, but curbed, at least temporarily, the effects of record rate increases. As a result of this action, The American Legion Magazine's foreign copies could no longer be entered into the Postal Service, requiring us to contract with a mail agent to provide this service at a cost of $87,000 in 1985, for delivery of 8,500 copies.

- The magazine makes full use of discounts allowed for presortation. Currently, about 64 percent of all issues are carrier-route qualified, and 20 percent are five-digit qualified.

- In order to ensure an accurate subscriber list, the magazine requests postal address corrections for each issue, a service that costs The American Legion about $100,000 per year.

- In 1986, the magazine will cut the number of pages published from 744 to 724, thereby saving about $50,000 in mailing expense, but losing 20 full pages of informational content important to the maintenance of voluntarism within the Legion.

- The magazine has complied with virtually every Postal Service request designed to expedite mail delivery and reduce USPS handling costs, even though our printing plant processing expenses have risen as a result.

Despite such economies, our magazine's total postal costs are still nearly double those of two years ago, and twelve times those of 16 years ago. You may argue that still this amounts to only cents per copy, and that is true. However, with 31,800,000 copies being mailed each year, an increase of "only cents per copy" is quite considerable, and that is money that must be subtracted from funding for ongoing programs, such as, in 1985 alone:

- Sending 30,000 young men to Boys State, at a cost of $2.1 million. • Sponsoring

2,600 Boy Scout troops, at a cost of $1 million. °Sponsoring 3,600 American Legion Baseball teams, at a cost approaching $10 million. °Sponsoring more than 10,000 youths in Oratorical Contests. °Awarding more than 3,700 scholarships. "Volunteering more than 2,000,000 hours to community service, and who can measure its value? °Donating more than 400,000 pints of blood. °Representing more than 350,000 veterans in rehabilitation cases, as well as donating more than $1 million in direct assistance. °Donating more than 1,000,000 volunteer hours at VA hospitals.

And we would be remiss if we failed to also note that the American Legion Auxiliary donated 6,500,000 volunteer hours, and raised and reinvested in America more than $26,500,000 in 1985 alone!

The benefits accruing to American society as a result of programs and activities such as these are incalculable, and probably far exceed the $64 billion value assigned to them by a 1981 Gallup survey.

What is equally significant is that, in large measure, these activities are made possible by our ability to communicate with our members at reasonable rates through the United States Postal Service. Most of this communication provides information of general membership interest about programs carried out at the community level, but coordinated at the state and national levels. These direct services to the public are worth far more than the meager cost of mail subsidies, and are precisely the sort of private-sector, self-help initiatives endorsed by the President when he spoke of increasing our national level of voluntarism.

It is a simple fact that people need to know where and when they are needed in order to respond. If citizens don't know where help is needed, in whatever form, they can't be expected to lend support. To effect this end, the significance of preferred mailing rates to certain nonprofit organizations is undeniable. Increased postal rates make it continually more difficult to keep community-based volunteer programs alive.

The appropriation of funds for Revenue Forgone represents one of the best uses of assistance by the government to ensure the free flow of ideas so essential to the prosperity of our republic. As Senator Barry Goldwater observed, and we agree: "The circulation of the printed word in the mails has historically been treated as a public service which should be promoted by the government....Any time the public is deprived of a broad range of sources of culture and information that it is now receiving, we cannot know what drastic changes may be set in motion."

All across this nation, hundreds of thousands of people, as well as thousands of communities, reap benefits as a result of a postal subsidy that represents a mere fraction of 1 percent of all federal expenditures. The cost-to-benefit ratio of the Revenue Forgone postal subsidy, dollar for dollar, makes it one of the soundest investments any government ever made toward the health, education and well-being of its citizens and communities.

Yet, there are critics of Revenue Forgone who would still argue that the cost of mail should be borne by the users of mail services. Such arguments sound reasonable enough, but they indicate a deficiency in understanding the difference between for-profit and nonprofit organizations, and confusion concerning ultimate beneficiaries.

The profit-making ventures seek corporate gain to be distributed among shareholders. Nonprofit organizations seek only the wherewithal to continue to serve those who are in need of the services they provide. And, as a result of the efforts of organizations such as The American Legion, those beneficiaries are well served indeed.

Who can measure the cost to society if it were forced to pay for the services now provided by volunteers? The small number of dollars shared by society as a whole to fund Revenue Forgone benefits society as a whole, and is certainly far less than the resources that would be needed if such volunteers were not mobilized by organizations such as The American Legion.

Nonetheless, Congress is seeking ways to curb subsidies. Although The American Legion has complied with both the letter and the spirit of the law making it possible for us to enjoy nonprofit rates, we realize that the number of tax-exempt organizations continues to grow, and there is evidence that not all use the subsidized rates as Congress surely intended. Therefore, in order to curb the scope and amount of subsidies, we suggest that a standard of public service be established as a prerequisite to qualifying for preferred mailing rates.

If the taxpayers are to bear the expense of subsidies, it is only proper that they should benefit by the demonstration of a measurable service to our nation's communities by those who enjoy such subsidies. And this yardstick should be a matter of public record reported annually to a responsible arm of the federal government. The American Legion, for instance, discloses its balance sheet and a public record of all of its activities each year in its "Annual Report To The United States Congress." Other public-spirited organizations certainly would not object to following a similar procedure.

We suggest this general guideline as a starting point for legislation making measurable public benefit a prerequisite for a preferred rate mailing permit: "A user of nonprofit rates must be providing a measurable public benefit, in addition to the dissemination of general intelligence."

Obviously, some current nonprofit mailers would not meet this standard. We realize that their concern over a more stringent eligibility standard could create some discomfiture for Congressional members who would support a tightening of requirements. Political discomfort, however, is a rather constant companion of any member of Congress today who seeks to reduce the federal deficit.

To further tighten eligibility, we believe Congress should enact legislation that strictly prohibits the sale of any merchandise through the use of a nonprofit mailing permit if that merchandise is commercially available in essentially the same form. Fund-raising items that are valued at nominal cost would be exempted. This would permit nonprofit organizations to continue to raise funds for worthwhile purposes and to promote items embossed with their insignia, but would necessitate that those taking unfair advantage of their nonprofit status begin paying the postal costs rightly attributable to such enterprises.

We believe that these two actions alone would reduce the level of federal postal subsidies without any significant loss of public benefit.

This Commission has also been tasked with providing recommendations on: How might eligibility be limited to reduce advertising and promotional use of subsidized rates?

We realize that blatantly self-serving or improper use of nonprofit mailing permits not only damages the reputations and weakens the cases of legitimate nonprofit organizations, but that it also increases postal costs for all of us. Therefore, we would recommend that for-profit businesses be strictly prohibited from using nonprofit permits, under any pretense, for direct-mail advertising or promotion not directly related to the stated aims of the nonprofit organization performing the mailing. This, of course, would not apply to legitimate advertisers appearing in periodical publications of nonprofit organizations which meet all other criteria. It would eliminate, however, abuses such as occur when for-profit businesses team up with nonprofit organizations in joint ventures requiring the nonprofit organization to mail promotional material at nonprofit rates in return for a cut of the profits.

The last broad issue we wish to address is: How would mailing practices be adjusted if no longer subsidized through preferred rates?

The American Legion Magazine, other National Headquarters publications, and department and post publications would undoubtedly be forced to cut pages, frequency, or both. Many worthwhile publications now rendering a public service would be eliminated simply because it would be financially impossible to overcome the postal expense burden.

As a result of reduced communications, the finite amount of funds we now receive in membership dues would dwindle as membership decreased due to insufficient communication. As membership decreased, levels of community volunteer service would decline, and beneficiaries of all ages would suffer. The great works made possible by affordable postal rates would be diminished, and foolishly so inasmuch as Revenue Forgone is certainly one of the most cost-effective programs currently being funded by the United States Government.

The American Legion recognizes the deficit burden facing Congress, and we recognize its impact on the national economy. We, too, support fiscal responsibility, but we do not support balancing the budget by targeting the very individuals who are saving the government money. By that, we mean we don't support cutting off the lifeblood of American voluntarism — communications.

It would be indeed tragic if in pursuing the worthy goal of self-sufficiency, the Postal Service brought on the unintended decline or demise of untold numbers of newsletters, newspapers, and periodicals now providing a measurable public benefit at a bargain price.

We are certain that this is not what Congress intends. This recognition has led nonprofit organizations providing a measurable public benefit, of which we are certainly a leader, to ask Congress not for a rollback of postal rates, but instead for stabilization. Continuation of Revenue Forgone will provide that.

We believe that this is certainly a reasonable and responsible request.

Madam Chairman, that concludes our statement. We would be happy to respond to any questions you may have.

Mr. SKEEN. We have had several discussions about revenue foregone. The administration has offered a budget which zeroed that out. This committee has not chosen to go along with that recommendation because I think the consensus is that there is a need for this kind of operation and you cannot take it away from various groups such as the handicapped and veterans' organizations. However, there is still a question in some of our minds that there may be some abuses inherent in the system such as those publications for profit that tend to use the postal subsidy. Are you aware that there is part of the debate that goes on?

Mr. JOSEPH E. MILLER. Let me reference, if I might, in response to that question, part of the bill that we wrote.

Mr. SKEEN. I notice that you mentioned some needs test or you mentioned a criterion which is based on the need for the recipient organizations.

Mr. JOSEPH E. MILLER. Let me read part of this paragraph. We have been aware of a large number of—I say a large number—of a number of nonprofit organizations who have in fact teamed up with for-profit organizations and used their nonprofit status to mail things for for-profit organizations. We don't think that is appropriate.

It increases the handling costs and other nonprofit organizations providing public service are not able to do that same thing, so we have said that "Nor shall any mailing by any preferred rate mailer be permitted which is intended to act as a sales vehicle of any kind offering for sale, to sell, or otherwise dispose of merchandise or services available through commercial sources, except that space in periodical publications of non-profit organization sold to for profit entities shall not be considered a prohibited activity under this or any other section."

It is small items such as perhaps greeting cards. What we are looking at here specifically is things like cruises, airplane flights, briefcases, the whole plethora of items that yourself probably have found through the mail.

Mr. SKEEN. I don't know what the qualification of that kind of abuse would amount to. We have studied it within the committee trying to come up with some kind of language that would eliminate that. Those are very good suggestions and I appreciate your offering them in the text of your testimony. Mr. Wolf.

Mr. WOLF. No questions.

Mr. SKEEN. We thank you.

TUESDAY, APRIL 15, 1986.

FUNDING LEVEL FOR THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

WITNESS

ARNOLD GORDON, PRESIDENT OF JACK GORDON WHOLESALE TOBACCO COMPANY INC., SYRACUSE, NEW YORK, AND MEMBER, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS

Mr. SKEEN. We have Mr. Gordon, who is a member of the Board of Directors, National Association of Tobacco Distributors. We are delighted to have you here, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman. I appreciate the opportunity to be here before this committee again, as I have for the past four years. I wanted to express my personal condolescences to the committee members for the loss of Congressman Addabbo, who was not only a supporter of our cause but also a fellow New Yorker, and we will miss him.

Mr. Chairman and Members of the subcommittee, my name is Arnold Gordon, President of Jack Gordon Wholesale Tobacco Company Inc., Syracuse, New York. I am a member of the Board of Directors and past President of the National Association of Tobacco Distributors (NATD), which represents over 570 corporate wholesaler-distributor members with over 740 distribution outlets, and represents 230 manufacturer and supplier associates whose 12,000 salesmen canvass and supply almost 1.5 million retail outlets selling tobacco products across the United States. It is estimated that members of the association's trade and industry market goods with an annual wholesale value of over $16 billion.

Representative of the association have appeared before your subcommittee every year for the past four years to present their concerns regarding appropriations for the Treasury Department and, in particular, the impact which the funding level for the Bureau of Alcohol, Tobacco and Firearms (ATF) has on our industry. There is no other national trade association besides ours with a membership more directly affected by the decisions, regulations and enforcement functions of the tobacco part of the ATF.

Mr. Chairman, the association opposes the recommended budget for ATF tobacco law enforcement functions contained in the Department of the Treasury Fiscal Year 1987 Justification For Appropriations, submitted to this subcommittee for consideration. The ATF has recommended no funding for this function for fiscal year 1987, which would be a reduction of $4.2 million from the fiscal year 1986 level, despite the fact that the administration has proposed budget increases in all other areas of ATF law enforcement functions. As a result of this lack of funding, the ATF fiscal year 1987 work would involve no investigations and no suspects targeted for prosecution regarding cigarette contraband.

The NATD believes that the administration is wrong in its repeated attempts to eliminate the enforcement function under this ATF activity. We recommend maintaining this program at the fiscal year 1986 level of $4.185 million with 56 positions dedicated to the cigarette contraband enforcement function, as the Congress has done for the past five years.

Rather than read the rest of my statement, I would simply like to underline the fact that there has been no change in the condition that exists in our industry with respect to contraband cigarettes being bootlegged between states in this country and that the problem is as bad now as it has ever been, and we are finding that it increases as the cost of cigarettes increases, whether by manufacturer increase or by state tax increase, and that a good deal of that money is finding its way into the pockets of organized crime, and we want to eliminate that if we can.

Mr. **Skeen**. This is kind of a new area for me even though I served on the Tobacco Subcommittee of the Agriculture Committee. I didn't realize that the problem was that extensive. I appreciate you bringing it up.

Frank, do you have any questions?

Mr. **Wolf**. No questions, Mr. Chairman. I hadn't thought of it either.

Mr. **Skeen**. We had some discussion, about sales of bootleg cigarettes on Indian reservations.

Mr. **Gordon**. They are just nontaxed and that becomes a state and Federal problem. The Indian reservations do not pay state taxes. They are not required to pay the state tax, so they are in a greater competitive situation than any given retailer in the same market.

Mr. **Skeen**. Congressional determination in the last couple of years has outlawed that practice.

Mr. **Gordon**. The Congress has, but that is a state situation because each state has its own tax law. In New York it is a $2.10 on a carton difference from what they can sell them for and what a retailer can sell them for in the city because a retailer has to pay the tax.

Mr. **Wolf**. What is the cigarette price per pack, the high in the country and what is the low in the country?

Mr. **Gordon**. The highest I can think of would probably be Cook County, Chicago, with as much as $5.90 worth of tax on every carton of cigarettes.

Mr. **Wolf**. What would that transfer into per pack? What is the cost of a pack of cigarettes in Cook County?

Mr. **Gordon**. I am not sure, but probably anywhere between $1.25 and $1.50.

Mr. **Wolf**. What is the low in the country?

Mr. **Gordon**. The lowest states I believe are Kentucky and North Carolina. There is only 30 cents a carton, 3 cents on every pack in those two states that I am aware of, and that relates down to probably a cost per pack of maybe 70 to 80 cents. There is a big difference and that is what makes it obviously attractive for the bootlegger to purchase them in a low tax state and sell them in a high tax state, New York being a very high tax state.

Mr. **Skeen**. We find it in border areas near Mexico, they can buy the cigarettes from the same outlet but because of the tax difference. It is a profitable business.

Mr. **Gordon**. I would think there will be many Indian reservations also.

Mr. **Skeen**. I know it is basically a state problem.

Mr. **Gordon**. That even happens in Upstate New York. We have a reservation on our city limits. We have a situation where the law is being abused. They are supposed to be sold only to people of the Indian nation.

Mr. **Skeen**. We thank you.

Mr. **Gordon**. Thank you very much.

[The statement of Mr. Gordon follows:]

STATEMENT OF

ARNOLD GORDON
MEMBER BOARD OF DIRECTORS
NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS

BEFORE THE

HOUSE APPROPRIATIONS SUBCOMMITTEE ON
TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT

APRIL 15, 1986

Mr. Chairman and Members of the Subcommittee, my name is Arnold Gordon, President of Jack Gordon Wholesale Tobacco Company Inc., Syracuse, New York. I am a member of the Board of Directors and past President of the National Association of Tobacco Distributors (NATD), which represents over 570 corporate wholesaler-distributor members with over 740 distribution outlets, and represents 230 manufacturer and supplier associates whose 12,000 salesmen canvass and supply almost 1.5 million retail outlets selling tobacco products across the United States. It is estimated that members of the Association's trade and industry market goods with an annual wholesale value of over $16.0 billion dollars.

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You may recall, Mr. Chairman, that this Subcommittee, under your leadership, restored over $3.3 million for the Cigarette Contraband Enforcement Program in Fiscal Year 1986. At that time, the Subcommittee indicated in its report the following:

CIGARETTE SMUGGLING

> "The Committee has provided full funding for the continued enforcement of cigarette smuggling program for 1986. Public Law 95-575 was enacted on November 2,

> 1978, to eliminate racketeering in the sale and distribution of cigarettes. This program has been directed toward investigating principle traffickers in contraband cigarettes, their sources and distributors. The major emphasis has been toward combatting commerical interstate smuggling operations involving organized crime and those violations which cannot be jurisdictionally addressed by State and local law enforcement agencies. ATF should continue to concentrate its resources in those areas where overall coordination can be provided centrally more effectively and efficiently than can be done by the States individually. In as much as the States share this responsibility, these States have begun to develop the technical and enforcement expertise required to prevent trafficking in contraband cigarettes. The Bureau is directed to continue assisting the States in this important program in 1986 at the same level provided to the States in 1985."

Last year, the Senate Subcommittee supported the House's leadership in this matter by restoring all proposed cuts in the Cigarette Contraband Program. In fact, the Senate Subcommittee, Chaired by Senator James Abdnor (R-SD), indicated that the "Committee views these programs, as revenue collection activities, most important and therefore, directs ATF to use the restored funding to work on these and other priority areas."

The NATD believes these funds are well spent on behalf of the U.S. taxpayers. Cigarettes are a significant revenue source for the federal government budget, with an estimated $4.8 billion in revenue expected during FY 1986. It seems altogether fitting and proper that the federal government does its fair share to ensure that the distribution system for cigarettes in the United States is free from the pressures of smuggling, bootlegging and organized crime. Appropriations for the ATF in the amount of $4.185 million for FY 1987 is the least that could be done given the magnitude of the revenue contributions made by the federal cigarette excise tax.

Yet there are many other policy justifications for continued funding of ATF tobacco enforcement functions beyond the fact that cigarette excise taxes produce such a large revenue.

The basic cause of cigarette smuggling is the disparity in state and local cigarette tax rates, which produce the incentive for smuggling and bootlegging. These excise taxes continue to rise on a state and local level. For example, the price for a pack of cigarettes in Chicago includes 16 cents federal tax, 20 cents state tax, 15 cents city tax and 8 cents county tax, for a total of 59 cents in excise taxes while the price of a pack of cigarettes from the neighboring State of Kentucky includes only 16 cents federal tax and a mere 3 cents state tax for a total of 19 cents in excise taxes. A bootlegger would receive a profit of 40 cents for every pack of cigarettes, or $4.00 for every carton, which was purchased in Kentucky, trucked to Chicago and sold at the same price as similar packs sold through legitimate channels.

Indianapolis Boulevard is the dividing line between the City of Chicago, the State of Indiana. On the west side, the Illinois side that is, the excise tax on a pack of cigarettes is 59 cents. On the Indiana side it is 26 1/2 cents, or a difference of $3.35 per carton. The State of Illinois has put on 12 investigators, effective November 1, 1985, to curtail the cigarette contraband and bootlegging activities on this street alone. The Illinois Association of Candy and Tobacco Distributors informs us that as of March 1, 1986, when the new Illinois tax was effective, the State of Illinois estimated that it is loosing over $30 million per year from bootlegged cigarettes.

The situation in Illinois is not unique, according to our tobacco wholesaler members located around the country. For example, in New York a major tobacco-wholesale company had five hijackings in four weeks and now maintains armed guards in its warehouses to prevent cigarette smuggling. I would like at this time, Mr. Chairman, to ask permission to insert with my testimony a March 17, 1986 letter from Paul Crotty, Commissioner of Finance for the City of New York to George Elicofon, Executive Director of the New York State Association of Tobacco and Candy Distributors. Mr. Crotty, indicates that the cuts in this area would "compromise the ability or collect the taxes due on cigarettes."

Mr. Chairman, if I were in the organized crime family, I would be pleased to see the end of federal cigarette contraband enforcement functions. In fact, I would encourage a further reduction to virtually eliminate all agents, investigations and programs in this area. However, we at NATD strongly believe that now is not the time to reduce this law-enforcement function.

The circmstances which foster cigarette tax evasion shcemes have not been eliminated, but rather have been enhanced; and hense there is a greater motive for the resurgence of this activity. The only solution is a continued federal presence in the tobacco enforcement area. The federal presence is a deterrent to organized crime, and assistance to state enforcement rent to organized crime, and assistance to state enforcement authorities, and the only means to control a problem which is, by definition, an interstate problem.

Therefore, we urge the Subcommittee to appropriate $4.185 million for Fiscal Year 1987 for the cigarette contraband enforcement area in the Bureau of Alcohol, Tobacco and Firearms. Funding at this level, which is the same as that of Fiscal Year 1986, will allow ATF to fulfill its important responsibilities.

Finance

The City of New York
Department of Finance
Municipal Building
New York, N.Y. 10007
Telephone: 566-2574

Paul A. Crotty
Commissioner of Finance

March 17, 1986

Mr. George Elicofon
Executive Director
New York State Association of
Tobacco and Candy Distributors, Inc.
211 East 43rd Street
New York, New York 10017

Dear Mr. Elicofon:

Thank you for your letter regarding proposed cuts in the proposed federal budget for Fiscal 1987.

The proposed savings are very short sighted because they will compromise the ability to collect the taxes due on alcohol and cigarettes. We share your concern about the loss of funding to the Bureau of Alcohol, Tobacco and Firearms. This is an area, as you know, which requires close monitoring.

Also, thank you for commending Ms. Mildred Zaky. It is a pleasure knowing that we have such knowledgeable, efficient and courteous employees at the Department of Finance.

Thank you for writing to me about you concerns.

Sincerely yours,

Paul A Crotty

Paul A. Crotty

PAC/rh

TUESDAY, APRIL 15, 1986.

COALITION TO SAVE OUR DOCUMENTARY HERITAGE

WITNESS

EDWARD C. CARTER II, EDITOR-IN-CHIEF OF THE PAPERS OF BENJAMIN HENRY LATROBE AND LIBRARIAN OF THE AMERICAN PHILOSOPHICAL SOCIETY OF PHILADELPHIA

Mr. SKEEN. Edward C. Carter, Coalition to Save Democratic Heritage will be next.

Welcome to the committee.

Mr. CARTER. Mr. Chairman, I have two requests. I am going to read a slightly abbreviated version of my prepared remarks, but I would like our remarks to be included in the record.

Second, I have brought with me two of the latest publications which I am editor-in-chief of.

I am going to talk about support of the National Historical Publications and Records Commission. I thought you might like to see what we do.

One is the volume of correspondence of Benjamin Henry Latrobe that we have begun. I put a mark where the Architect of the Capitol begins correspondence with Mr. Jefferson—he rebuilt the Capitol after it burned.

I have also brought a popular book, Latrobe's View of America, which is the first water color views of Latrobe, perhaps the most extensive views of America, and perhaps the Congressman from Virginia would be particularly interested in these views of the Old Dominion, which is the first part of this volume.

Mr. SKEEN. You have a very receptive audience. I don't think anyone can serve in this body without being something of a devotee of history and the way it is presented. We appreciate you being here.

Mr. CARTER. Mr. Chairman and members of the subcommittee, I am Edward C. Carter II the Editor-in-Chief of The Papers of Benjamin Henry Latrobe and Librarian of the American Philosophical Society of Philadelphia. I want to thank you for the opportunity to appear before this committee today.

I am here to testify as the representative of the 56-member organizations of the Coalition to Save our Documentary Heritage. These organizations represent historians, archivists, genealogists, educators, librarians, and editors who share a common belief that the preservation and publication of the source documents of the United States and its people will in no small measure strengthen American democracy now and in the future.

The members of the coalition vigorously urge this committee to fund the grants program of the National Historical Publications and Records Commission at the authorized level of $5 million. Congress mandated this funding level for fiscal year 1986 to 1988, but it has yet to be achieved.

A number of important and well managed new editorial projects which have completed their start up periods are demonstrating an unusually high level of publication productivity due to the adoption of modern computer technology. Curtailment in NHPRC funding thus threatens the achievements of editors and staffs who have already economized rigorously.

This tiny and highly efficient program performs a real service at a very low cost for American historical scholarship and in due course the general public. The coalition notes that Congress has continually exhibited its support for the mission of NHPRC and hopes that this committee will support the full authorized $5 million figure once again.

The major thrust of my testimony will be personal and somewhat idiosyncratic. I understand that the coalition will provide members of this committee with a fact sheet detailing the nature and scope of NHPRC's remarkable achievements in the areas of book and microform publication and records preservation. I will speak as an editor of 15 years' experience who is now bringing to a conclusion with extensive Federal and private financial support the edited works of the nation's first great professional architect and engineer, the man who created this beautiful, monumental home of the United States Congress, Benjamin Henry Latrobe.

I also am the librarian of the oldest learned society in American that without Federal funds has supported a number of our most significant modern historical documentary editing projects, the American Philosophical Society that was founded by Benjamin Franklin in Philadelphia in 1743.

While I do not speak for the society in these hearings, I want you to know that I live in both the worlds of federally and privately funded scholarship and I fully comprehend and appreciate the key leadership role that the United States Government should and does play in documentary historical editing.

The American Philosophical Society, which receives no public funds, has contributed financially to several editions, some $250,000 to The Papers of Benjamin Franklin, smaller amounts to The Papers of William Penn, The Papers of Benjamin Henry Latrobe, of William Thornton, first Architect of the United States Capitol, of Joseph Henry, first Secretary of the Smithsonian Institution, of Charles Willson Peale, and of Charles Darwin.

Why should Congress press for the full level of authorized support for NHPRC? The basic point is that the commission is the only Federal agency dedicated solely to the financial and technical support of the preservation and publication of the sources of American historical documentary scholarship. The national nature of this field of intellectual endeavor requires that the Federal Government provide the necessary leadership.

NHPRC has met this challenge brilliantly and in a most economic fashion. To purloin the famous words of Winston Churchill, "Never have so few taxpayer dollars done so much for so many."

Specifically in what ways do I believe that NHPRC has fulfilled its mandate so as to merit your committee's continued legislative support and that of Congress as a whole?

The publication of key documents of America's history: For half a century NHPRC has facilitated the collection, study, editing and publication of the papers of those individuals and groups who shaped our nation's history. As we enter the Bicentennial of the United States Constitution, it should be noted that our understanding of the process for establishing our Federal framework of government has been enhanced greatly by the commission's timely support of four germane projects: The Documentary History of the Ratification of the Constitution and the Bill of Rights, the Documentary History of the First Federal Elections, The Documentary History of the First Federal Congress, and the Documentary HIstory of the Supreme Court (1789-1800), which were initiated by the NHPRC.

Previously NHPRC helped launch and continues to fund the great modern editions of our Founding Fathers: Franklin, Jefferson, Adams, Hamilton, and Madison, but the members of the commission and its superb small staff long ago recognized that we have other Founding Fathers and Founding Mothers whose words and deeds deserve preservation and publication so that they might be available to our college and high school students, and other members of our citizenry.

Thus, NHPRC has encouraged the creation and funded numerous, varied editorial projects that highlight the achievement of our pluralistic democratic process of nation building. Because of the farsighted and professional leadership of NHPRC, we now have the papers of notable women, blacks such as Frederick Douglass, other minority leaders and groups, Native Americans, artists, such as Latrobe and Charles Willson Peale, labor leaders such as Samuel Gompers, businessmen, scientists, the early archives of New Mexico (1621 to 1921), and many more worthwhile ventures. Indeed, it is a bountiful harvest that the commission is helping gather in as we enter the Constitution Bicentennial celebration.

NHPRC, with the assistance of Federal and private funds, has played and continues to play a significant role in the creation of a new scholarly profession—the historical documentary editor.

When I entered the field 15 years ago, the first great modern editors, Julian Boyd of the Jefferson Papers and Lyman H. Butterfield of the Adams Papers, were nearing the end of their distinguished careers.

I acquired much of my editorial skill through their generous ad hoc instruction, but clearly a more formal mechanism was required if new projects were to be competently staffed. NHPRC took the lead with a series of conferences on the needs and opportunities of editing. The commission's greatest contribution has been its sponsorship of annual summer editing institutes at the Universities of Virginia, South Carolina, and Wisconsin.

Besides the documentary editing program, NHPRC's other major task has been to encourage the care of vital archival materials throughout the nation. Here is a primarily state and local problem that is being addressed with the assistance of Federal leadership.

A Wise and Balanced Record of Funding Documentary Editions: This is an absolutely necessary function of NHPRC. My project, The Papers of Benjamin Henry Latrobe, which has received 10 NHPRC editorial grants and seven publication subvention grants is unusual in that it has attracted wide support from private foundations and individuals, perhaps 25 percent of our total funding.

While to some degree this reflects my ability as a persuasive fundraiser, it is due mainly to the fact that Latrobe's works are highly important, beautiful, and appealing to a wide audience of scholars and the general public.

The point I wish to make is that without Federal funds and the NHPRC's certification I would never have been able to secure the major private grants that I did from the Andrew W. Mellon Foundation, the Rockefeller Foundation, and the U.S. Capitol Historical Society.

Most documentary historical projects do not have the general appeal of the Latrobe Papers, nor do their editors have the time or requisite skills to secure major private funds. NHPRC funding is the life blood of these projects, certainly during the start-up years.

The Health of the National Archives itself: NHPRC not only serves the American scholarly public, but it is also highly important to is parent organization the National Archives and Records Administration. I base my judgment on a year-long consideration of the strengths and needs of NARA. Until a week ago, I was a serious final candidate for the position of Archivist of the United States. Last Tuesday the White House informed me that the President has selected another person for this important post.

During the course of my candidacy for the Archivist position, I spoke with a number of the leading NARA administrators, staff members, representatives of user groups, and had several interviews at the White House. Those conversations and much reading only reinforced my initial belief that NHPRC should be funded fully and also suggested that its present functions could be expanded with profit.

Today NHPRC is the major section of the National Archives that interacts on a regular formal basis with scholars, universities and historical societies, and academic presses. A term of service on the NHPRC staff would be beneficial for young administrators of promise throughout the NARA. Experience gained in NHPRC would be excellent training for establishing much needed contacts between regional NARA offices, presidenital libraries and local academic history departments, historical societies, and archives. This is the direction that the National Archives as a whole is moving and NHPRC will be a valuable facilitator of this policy.

I conclude by urging the committee to lend its support not only to NHPRC but also NARA in its entirety. The National Archives is facing many pressing problems in Washington and throughout the nation. The building on Pennsylvania Avenue needs to be redesigned and rebuilt so as to house its present collections more safely and efficiently and also to provide modern exhibition and meeting space.

A promising and vitally needed preservation program has been planned and partially staffed but not initially funded even though budgeted. Perhaps the most pressing need of the National Archives is how to provide for current and future storage space. Clearly the problem can only be solved by the construction of a modern, technologically advanced annex building in the Washington area, preferably near or on the Mall. These are serious issues of national importance. Let us address them in a logical and energetic way.

Mr. Chairman and members of the committee, let me thank you again for giving me the opportunity of testifying before you. If you have any questions, I will be pleased to answer them.

[The statement of Mr. Carter follows:]

TESTIMONY OF EDWARD C. CARTER II
IN BEHALF OF
THE COALITION TO SAVE OUR DOCUMENTARY HERITAGE
BEFORE THE
HOUSE APPROPRIATIONS SUBCOMMITTEE ON
TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT

APRIL 15, 1986

Mr. Chairman and Members of the Subcommittee:

I am Edward C. Carter II the Editor in Chief of The Papers of Benjamin Henry Latrobe and Librarian of the American Philosophical Society of Philadelphia. I want to thank you for the opportunity to appear before this committee today. I am here to testify as the representative of the 56 member organizations of the Coalition to Save Our Documentary Heritage. These organizations represent historians, archivists, genealogists, educators, librarians, and editors who share a common belief that the preservation and publication of the source documents of the United States and its people will in no small measure strengthen American democracy now and in the future.

The members of the Coalition vigorously urge this committee to fund the grants program of the National Historical Publications and Records Commission (NHPRC) at the authorized level of $5 million. Congress mandated this funding level for FY '86 - '88 but it has yet to be achieved. A number of important and well-managed new editorial projects which have completed their "start-up" periods are demonstrating an unusually high level of publication productivity due to the adoption of modern computer technology. Curtailment in NHPRC funding thus threatens the achievements of editors and staffs who have already economized rigorously. This tiny and highly efficient program performs a real service at a very low cost for American historical scholarship and in due course the general public. The Coalition notes that Congress has continually exhibited its support for the mission of NHPRC and hopes that this committee will support the full authorized $5 million figure once again.

The major thrust of my testimony will be personal and somewhat idiosyncratic. I understand that the Coalition will provide members of this committee with a fact sheet detailing the nature and scope of NHPRC's remarkable achievements in the areas of book and microform publication and records preservation. I will speak as an editor of fifteen years' experience who is now bringing to a conclusion, with extensive federal and private financial support, the edited works of this nation's first great professional architect and engineer--the man who built this beautiful, monumental home of the United States Congress--Benjamin Henry Latrobe.

I also am the Librarian of the oldest learned society in America that without federal funds has supported a number of our most significant modern historical documentary editing projects--the American Philosophical Society that was founded by Franklin in Philadelphia in 1743. While I do not speak for the Society in these hearings, I want you to know that I live in both the worlds of federally and privately funded scholarship and I fully comprehend and appreciate the key leadership role that the United States government should and does play in documentary historical editing. The American Philosophical Society, which receives no public funds, has contributed financially to several editions--some $350,000 to The Papers of Benjamin Franklin, smaller amounts to The Papers of William Penn, The Papers of Benajmin Henry Latrobe, of William Thornton--first architect of the United States Capitol, of Joseph Henry, first Secretary of the Smithsonian Institution, of Charles Willson Peale, and of Charles Darwin. In addition, the Society has provided free of charge quarters, light and heat, and scholarly support for extended periods of time to the Darwin Papers and the Latrobe Papers projects.

Why should Congress press for the full level of authorized support for NHPRC? The basic point is that the Commission is the only federal agency dedicated solely to the financial and technical support of the preservation and publication of the sources of American historical documentary scholarship. The national nature of this field of intellectual endeavor requires that the federal government provide the necessary leadership. NHPRC has met this challenge brilliantly and in a most economic fashion. To purloin the famous words of Winston Churchill -- "Never have so few taxpayer dollars done so much for so many."

Specifically in what ways do I believe that NHPRC has fulfilled its mandate so as to merit your committee's continued legislative support and that of Congress as a whole?

THE PUBLICATION OF KEY DOCUMENTS OF AMERICA'S HISTORY. For half a century NHPRC has facilitated the collection, study, editing, and publication of the papers of those individuals and groups who shaped our nation's history. As we enter the Bicentennial of the United States Constitution it should be noted that our understanding of the process of establishing our federal framework of government has been enhanced greatly by the Commission's timely support of four germane projects: The Documentary History of the Ratification of the Constitution and The Bill of Rights, The Documentary History of the First Federal Elections, The Documentary History of the First Federal Congress, and The Documentary History of the Supreme Court (1789-1800), which were initiated by the NHPRC.

Previously NHPRC helped launch and continues to fund the great modern editions of our Founding Fathers: Franklin, Jefferson, Adams, Hamilton, and Madison. But the members of the Commission and its superb small staff long ago recognized that we have other Founding Fathers and Mothers whose words and deeds deserve preservation and publication so that they might be available to our college and high school students and other members of our citizenry. Thus NHPRC has encouraged the creation and funded numerous, varied editorial projects that highlight the achievement of our puralistic democratic process of nation building. Because of the farsighted and professional leadership of NHPRC we now have the papers of notable women, Blacks such as Frederick Douglass, other minority leaders and groups, Native Americans, artists, such as Latrobe and Charles Willson Peale, labor leaders such as Samuel Gompers, businessmen, scientists, the early archives of New Mexico (1621-1921), and many more worthwhile ventures. Indeed, it is a bountiful harvest that the commission is helping gather in as we enter the Constitution Bicentennial celebration.

EDUCATION AND TRAINING. NHPRC with the assistance of federal and private funds has played and continues to play a significant role in the creation of a new scholarly profession--the historical documentary editor. When I entered the field fifteen years ago, the first great modern editors--Julian Boyd of the Jefferson Papers and Lyman H. Butterfield of the Adams Papers--were nearing the end of their distinguished careers. I acquired much of my editorial skill through their generous ad hoc instruction, but clearly a more formal mechanism was required if new projects were to be competently staffed. NHPRC took the lead with a series of conferences on the needs and opportunities of editing. The Commission's greatest contribution has been its sponsorship of annual summer editing institutes at the universities of Virginia, South Carolina, and Wisconsin. NHPRC assisted in the founding of the Association for Documentary Editing. In short, NHPRC has helped create an entirely new scholarly professon.

PRESERVATION OF RECORDS. Besides the documentary editing program, NHPRC's other major task has been to encourage the care of vital archival materials throughout the nation. Here is a primarily state and local problem that is being addressed with the assistance of federal leadership. Since 1975 when the Records section of the Commission was established, NHPRC through grants and technical advice has assisted public agencies and private organizations, such as historical societies and universities, throughout the country to identify problems of documentary disorder and decay and to launch effective preservation programs.

A WISE AND BALANCED RECORD OF FUNDING DOCUMENTARY EDITIONS. This is an absolutely necessary function of NHPRC. My project, The Papers of Benjamin Henry Latrobe, which has received ten NHPRC editorial grants and seven publication subvention grants is unusual in that it has attracted wide support from private foundations and individuals (perhaps 25% of our total funding). While to some degree this reflects my ability as a persuasive fundraiser, it is due mainly to the fact that Latrobe's works are highly important, beautiful, and appealing to a wide audience of scholars and the general public. (I have taken the liberty of bringing two volumes for the Committee's inspection.) The point I wish to make is that without federal funds and the NHPRC's certification I would never have been able to secure the major private grants that I did from The Andrew W. Mellon Fundation, The Rockefeller Foundation, and the U. S. Capitol Historical Society. Most documentary historical projects do not have the general appeal of the Latrobe Papers nor do their editors have the time or requisite skills to secure major private support. NHPRC funding is the life blood of these projects--certainly during the start up years. The Commission's staff has been quite effective lately in helping editors tap private sources when volumes begin to emerge from University presses assisted by publication subventions.

THE HEALTH OF THE NATIONAL ARCHIVES ITSELF. NHPRC not only serves the American scholarly public but it is also highly important to its parent organization the National Archives and Records Administration. I base my judgment on a year long consideration of the strengths and needs of NARA. Until a week ago, I was a serious final candidate for the position of Archivist of the United States. Last Tuesday, the White House informed me that the President had selected another person for this most important post. During the course of my candidacy for the Archivist position, I spoke with a number of the leading NARA administrators, staff members, representatives of user groups, and had several interviews at the White House. Those conversations and much reading only reinforced my initial belief that NHPRC should be funded fully and also suggested that its present functions could be expanded with profit.

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I conclude by urging the committee to lend its support not only to NHPRC but also NARA in its entirety. The National Archives is facing many pressing problems in Washington and throughout the nation. The building on Pennsylvania Avenue needs to be redesigned and rebuilt so as to house its present collections more safely and efficiently and also to provide modern exhibition and meeting space. A promising and vitally needed preservation program has been planned and partially staffed but not initially funded even though budgeted. Perhaps the most pressing need of the National Archives is how to provide for current and future storage space. Clearly the problem can only be solved by the construction of a modern, technologically advanced Annex Building in the Washington area--preferably near or on the Mall. These are serious issues of national importance; let us address them in a logical and energetic way.

Mr. Chairman and members of the committee let me thank you again for giving me the opportunity of testifying before you. If you have any questions, I will be pleased to answer them.

Mr. SKEEN. Thank you, Mr. Carter. We appreciate the points that you have made.

You mentioned the Archives building. Most of the money that we have talked about here has been grants, $4 million that comes through NARA. Where does your money for capital investments such as buildings come from?

Mr. CARTER. I think in the long run it will have to come from congressional appropriations.

Mr. SKEEN. You are saying that you need an appropriation of your own?

Mr. CARTER. For NARA it is in due course—basically I am here to testify for funding for NHPRC at the grass level, but I am also putting in my pitch for looking seriously as the overall problems they face and the decay that is going on. I think that is something of national concern.

Mr. SKEEN. So you are wearing several hats then?

Mr. CARTER. Well, trying.

Mr. SKEEN. I do appreciate the fact that an Eastern historical group would recognize something that New Mexico contributed. I thought that was very well done.

Mr. CARTER. This is a national organization. It is the Federal Government, and what has been interesting is how it has moved from basically an organization which I think naturally in the beginning, when Harry Truman saw the Jefferson papers, he said, "Take the commission, revitalize it and start working." He began with the leading figures of America, but the staff and commission members who were unpaid members pushed that out so we throw our mandate over all aspects of American society. That is a very helpful thing.

Mr. SKEEN. I didn't mean to say that you were provincial in any way. We are proud of the fact that New Mexico is steeped in so much history. Ours began 100 years before the pilgrims landed on Plymouth Rock. That certainly makes your job a great deal more difficult because you have to go to all these source materials and a lot of times that means Spain.

Mr. Wolf?

Mr. WOLF. Thank you, Mr. Chairman.

I just want to welcome you here. I am a Member of Congress from Virginia although I was born and raised in Philadelphia and went to Penn State. Are you located by Curtis Publishing?

Mr. CARTER. Yes.

Mr. WOLF. I used to work as a mail boy at Curtis Publishing Company years ago. We had one of those little brick buildings and a little plaque.

Mr. CARTER. The original Hall of the Society is next to the East wing of Indiana's Hall, which is the only private property out of the state house hard and that was built and opened in 1787, 1789. As a matter of fact, when the constitutional convention was going on some of the members popped out to go to ATS meetings and across the street are two libraries, and we have now rehabbed another building on Chestnut Street, so we now have three buildings plus the Thomas Jefferson Garden.

Mr. WOLF. It is very interesting. I think you make a good case. I think we should remember our history.

In my congressional district it is where a lot of things began, George Washington had his house and Robert E. Lee had a place there. I don't know what the committee is going to be doing. Of course, there would not be money for funding for a new building, but I think you make a good case. I appreciate your testimony.

Thank you again.

Thank you, Mr. Chairman.

Mr. SKEEN. We thank you. You would just as well put a word in for the building——

Mr. WOLF. But it is important, though.

Mr. CARTER. It is very important.

Mr. SKEEN. Thank you very much, Mr. Carter.

Mr. CARTER. Thank you, Mr. Chairman.

TUESDAY, APRIL 15, 1986.

NATIONAL COORDINATING COMMITTEE FOR THE PROMOTION OF HISTORY

WITNESS

PAGE PUTNAM MILLER, DIRECTOR, NATIONAL COORDINATING COMMITTEE FOR THE PROMOTION OF HISTORY

Mr. SKEEN. Ms. Miller?

Ms. PAGE MILLER. I am the Director of the National Coordinating Committee for the Promotion of History and I coordinate the activities in Washington for 37 historical and archival organizations, so I speak on behalf of university history professors, archivists, people who work in museums and people throughout the country who are concerned and care about history.

I feel that I am talking today to the converted so I won't take time to go through a litany of all the wonderful things that are done with NHPRC grants.

I would like to highlight three points for you. The first is that the documentary editing projects comprise approximately half of the NHPRC projects and they depend on the continuity of professional staff.

I think from looking at the volumes that Dr. Carter has provided you realize the expertise and the years and the immersion of the staff in these topics and to this possibility of the end of Federal funding is just a very grave concern to staff members and they can't help but start thinking about other job possibilities.

When you have this sort of cloud on the horizon, not having continuous support there is the fear that the staff, who are really your expertise, are in danger of being lost and if the funds are eliminated and these projects stop for a year or so and somebody tries to start them up again, it is an enormous catch-up job to find staff that are really familiar with these periods.

My second point is that the NHPRC grants have a very significant and widespread effect beyond the project itself so there is a big ripple effect for the money that is spent.

I guess I am arguing that this is money that has a lot of long-term effects.

I was just mentioning, in my written testimony, one example of this, this is from the records side of the projects, but several years ago, and this is an ongoing project, a number of states are still participating in this project, there were state assessment studies.

It gave the individual states a chance through the funding from NHPRC to do some studies to get an idea of what the status of records, the preservation, the storage, all the kinds of problems of records in the state, and as a result of these state assessment studies, I have just returned from a conference of historians in New York and I bumped into a historian from Nevada and he said we have really managed to extend our state archives program and it goes back to that NHPRC grant that gave us the money to do a five-year plan and as a result of that plan we were able to get additional moneys so I think that the grants have served a very significant role in raising the consciousness of people in other institutions of what they need to do for records.

My last point really comes to something that we have discussed this morning in terms of the money itself and the funding. Congress for the past five years when the Administration has recommended zero funding for NHPRC has come through with this money and we have really appreciated that. Several times, however, the money has not been additional, add-on money, but the money to support NHPRC had to come from other operating areas within the National Archives.

That is why we talk about the whole National Archives budget, because I am here today to plead that this be an additional add-on sum instead of money that must be taken from other programs at the archives, and to illustrate this point, I wanted to mention four very pressing needs of the National Archives that are not in the current budget.

I am not here today to really ask for additional money for the Archives, but I am here saying that the Archives has many needs that are not being met and to take this—if Congress is willing to appropriate the $5 million, to take this from the Archives, which already has a very stretched budget, would be very difficult for the Archives.

To talk a minute about the space problem, the space problem is not only that there is a need for additional space, but the major archives building, the one that we love so much on Pennsylvania Avenue and the Mall, we have to realize that dust, humidity, temperature, these are not correct in this building and we are storing documents that are not in the proper climate control, and archivists realize this, but that building without major renovation will not meet the environmental standards that we now know are important for many of these valuable documents.

There is renovation in the building that needs to be addressed. That is something you can push to the back burner, we will do that another year, but we have been saying that so long that at some point that is going to have to be done.

The other point is not having space for new documents to come in. When you don't have space for the new documents, the agencies hold the records and pay a rent for storage that is $12 a cubic foot compared to less than $1.00 that the Archives pays for storage.

So when you don't have adequate storage space for the agencies to transfer documents, you are really costing, in the long term agencies are having to pay a lot more money for storage so it is cheaper for the government in the big picture for the Archives to have room to acquire those documents.

A second point is on the preservation of records.

A recent study which the Archives completed on our preservation plan, and they have seen this as a long-term, 20-year plan, they have discovered that 85 percent of the paper records need some maintenance preservation work. It may mean just transferring them to an acid-free box, but they have identified enormous preservation needs and this is not being addressed at all in the current budget. There is just very minimal preservation money.

A third item that is of major concern to scholars, I will speak from a historian's point of view, is that you can only use documents in the archives if you can find them and we depend on what is called finding aids to find these and 50 percent of all the records in the National Archives you cannot use because you cannot find them because there are no finding aids for them.

So the whole problem of catch-up on the backlog of being able to—archivists use the term, gain intellectual control over the records. They are there in the boxes, but you really can't use them.

There are a lot of military records that do not have finding aids from the second World War that a lot of military scholars really need. These are not just very, very old documents that no one wants to use, but there are documents that would be used if the finding aids were there.

Last, let me speak to the problems of research and development money. As you know, we are in a time of enormous change in technology and we realize now that with optical disks there are all kinds of things that could be done to preserve documents, but the money for research and development is miniscule.

Just another million and a half more in this area of research and development would make such a big difference for the Archives. All the items I have mentioned they had to cut back on and do not have adequate funding.

I feel that you are already aware of the importance of the NHPRC grants and so I won't labor that point more, but I do hope that the $5 million funding can be on top of the appropriation for the National Archives and that whenever it is the appropriate time, and I hope it isn't too far away, we do need to address these four problems for the Archives.

Thank you very much.

[The statement of Ms. Page Miller follows:]

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY

NCC

Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003/(202) 544-2422

DR. PAGE PUTNAM MILLER
Director

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Statement of Page Putnam Miller

Director, National Coordinating Committee For the Promotion of History

U.S. House of Representatives, Subcommittee on Treasury, Postal Service, and General Government of the Appropriations Committee

April 15, 1986

I am Page Putnam Miller, Director of the National Coordinating Committee for the Promotion of History, a consortium of over thirty-seven historical organizations.

Mr. Chairman, on behalf of the historical and archival communities in this country, I wish to express appreciation to you for being able to appear before this distinguished committee to express our views concerning the impact of the Administration's FY'86 budget recommendations on the National Historical Publication and Records Commission's grants program and the National Archives and Records Administration. We recognize the important role of this committee in providing oversight for both the NHPRC and the National Archives.

We are most concerned, Mr. Chairman, over the fact that for the sixth consecutive year the Administration's proposed budget has recommended zero funding for the NHPRC's grants program. In 1983 the Congress passed reauthorization legislation for NHPRC and reaffirmed the important role of this program in maintaining and enhancing our repositories of historical documents.

The $5 million appropriation which we seek -- and which is the authorized FY'87 ceiling for the grants program of the NHPRC -- is a small amount of money to pay for the thoughts of Washington, Adams, Jefferson, Madison, Clay, and Calhoun. How can we set a price on the writings of Frederick Douglas, Jane Addams, and Woodrow Wilson?

Each year for the past five years the historical and archival communities has come before you to describe the worthwhile work of this small program. We have stressed the fact that over half of the costs of these projects is contributed from the private sector. It is widely recognized that the NHPRC program has been an exemplary program for illustrating the use of federal "seed money" to provide genuine leverage for eliciting funds from private sources.

I know you are familiar with the NHPRC grants program and thus I wish today to highlight only three points. First, the documentary editing projects, which comprise approximately half of the program, depend on the continuity of professional staff and to cut off funding in mid-stream would be disasterous. Second, the NHPRC records projects have a widespread and significant role in stimulating further preservaton of historical records. Third, it is crucial that additional funds for NHPRC grants be added to the FY'87 appropriation instead of being taken from the already stretched budget of the National Archives.

First, continuity of staff and funding is essential. Withdrawal of federal funds means a decrease in continuing professional staff, on which numerous projects depend. The withdrawal of federal funding would undoubtedly mean the termination of more than half of the present documentary editing projects. Some of the projects likely to end if funding is lost are The History of the First Federal Congress, the Ulysses S. Grant papers, the Freedmen and Southern Society papers, and the Emma Goldman papers, among others. Many of the staff involved in these projects are scholars who have dedicated their professional careers to immersing themselves in the lives and thoughts of those whom they study. If NHPRC grants are not forthcoming, many members of documentary editing staffs will have to look elsewhere for work and their accumulated knowledge and background in the projects will be lost. To appreciate the scope of these projects and the crucial role of professional staff, consider the monumental example of the documentary editing of the papers of Thomas Jefferson. In 1950 Julian Boyd, the editor of this undertaking, published the first volume of the Jefferson Papers. The last volume Boyd published before his death in 1983 was volume 20; however, at that time thirty-five more years of Jefferson's life had yet to be edited and published.

Assembling the pertinent papers, providing needed annotative information, and finally preparing for publication the historical texts is an enormous task. The vastness of editing projects is also displayed by the Freedom History Papers which has as one of its smaller sources the records of the Freedmen's Bureau, a collection of federal documents which contains over 700 cubic feet of material. In 1983, when NHPRC was once before forced to tighten its belt due to inadequate funding, only one of the five proposed volumes in the Freedom History Papers had been completed. Since that time, with the assistance of NHPRC grants, two additional volumes in this project have been published and have received widespread recognition as major contributions to the study of American history. To summarize this first point, it is most important for those who support NHPRC grants to emphasize that when funding sources become indefinite, it is difficult to hold together the staff on whose expertise these projects rest.

Second, NHPRC grants fund projects that have a significant role in stimulating other individuals and institutions to preserve historical documents. On this point, let me give an example from the records projects, since I have already mentioned the documentary editing projects. Several years ago the National Association of Government Archives and Records Administrators received a grant from NHPRC to enable the states to assess their records programs, and to plan for the future. These state assessment studies were, and still are, aimed at producing statewide programs designed to efficiently manage and preserve records. In a recent conversation with a historian in Nevada, I learned that the NHPRC state assessment study for Nevada had led to the development of a five-year plan for protecting the historically valuable records of the state, and that this plan had in turn led to the acquiring of additional funds for the expansion of the Archives staff for undertaking much needed labor intensive work. The records program does have tangible effects, as the state of Nevada has illustrated. The program not only involves work with specific records collections but also encourages preservation and management of records by states themselves.

And finally, let me stress a third point, that it is imperative that NHPRC grants funding not be taken from the budget of the Archives. While the Administration has not recommended major cuts for the National Archives, this newly independent agency, nevertheless, faces grave budgetary problems. These are primarily derived from its recent years of subordination to the General Services Administration. As a result of this association, the Archives has much catching-up to do, and there are numerous necessary projects not included in the FY'87 budget proposal. Let me list four pressing needs which are not met in the Administration's budget:

1. The Archives is faced with a severe shortage of storage space and a comprehensive space plan--centered around a new building--is a necessity. Furthermore, major renovation is needed on the Pennsylvania Avenue National Archives building to bring the building in line with standards necessary to efficiently store archival records. In discussing the status of the National Archives, we must all remain constantly aware that the National Archives does not have adequate space for receiving materials from agencies which should be transferred to the National Archives, and that many valuable records of this nation are being kept in facilities which do not meet proper dust, temperature and humidity standards.

2. A recent study on the conditions of records in the National Archives has indicated that 84.5% of the textural records in the Archives are in need of maintenance to slow down deterioration. Intensive laboratory treatment is needed on .4% of the holdings and 4.6% require copying. The longer we wait to address these preservation needs the greater the risk of actually losing some documents and the greater the cost in the long run.

3. The present budget reflects inadequate funds for needed work on finding aids. Scholars are particularly concerned about this because without descriptions of records, or finding aids, it is very difficult to gain access to records. There are no finding aids for 50% of the records in the National Archives, including some military records for which there are frequent requests for finding aids. A much needed automated information system would both take care of the backlog and proficiently describe new records arriving.

4. Research and development money is sorely needed to further a National Archives' pilot project on the use of optical disks. New technological possibilities are now in our grasp for preserving many deteriorating documents. This process would transfer frequently used and deteriorating genealogical records to optical disks, and would enhance the useability of records while preserving them.

I have presented in some detail information on these needs at the National Archives which are not currently being addressed and are not in the Administration's budget proposal. I do this in order to urge you not to recommend that money be transferred from the National Archives' operating budget to the NHPRC grants program. I am here today to urge that additional funds of $5 million be made available for the NHPRC grants program. I request on behalf of the historical and archival communities that these funds be placed on secure footing, as they provide this country with a priceless resource: a documentation of its history.

Mr. Skeen. Thank you.

As I recall during the regular course of hearings we had, these very points were brought up by the National Archives representatives at that time. You have a whole gamut of problems beginning with the building. This is becoming a point in history itself, you can trace documents saying what are we going to do with the National Archives Building.

I have no other questions. I think it was very well presented.

Ms. Page Miller. Thank you very much.

Mr. Skeen. What they have done in the past is fund the National Archives and give you $5 million of their money, which is always a nice way for us to hand it off.

Ms. Page Miller. That is why I spent most of my time today talking about the Archives' budget.

Mr. Skeen. I think you made a good point.

We will stand in recess until 2:00 p.m. o'clock this afternoon.

Tuesday, April 15, 1986.

LOS ALAMOS NATIONAL LABORATORIES

WITNESSES

C. JOHN UMBARGER
WESLEY P. UNRUH

Mr. Skeen. The committee will come to order.

It is a pleasure for me to have Mr. John Umbarger and Wesley P. Unruh from the Los Alamos Laboratories of New Mexico here.

Mr. Umbarger. Thank you very much for the opportunity to come in and speak to you. We would first like to enter into the record our prepared statement.

Wes Unruh and I are here to describe a low altitude aircraft surveillance system that Wes and his people have developed at Los Alamos and we believe it has direct application to our Southwestern border surveillance problems. The system basically detects movement from the ground level and up and unmanned sites.

It also can be used for a portable and fixed base installation mode. It is flexible and because it uses existing technology, it promises both high reliability and very low cost.

The presentation that we will give you here will be brief. It will be in four parts. I will briefly describe the Southwest border surveillance as it exists and Wes will describe the system. I will get to the cost benefits and the funding needed to carry on a small program.

If you look at the Southwestern border of the United States, the area from Brownsville, Texas, which extends to San Diego, we currently have a border there of about 1,500 miles. It is a very rough terrain, pretty rugged and if you were to stretch the border you would have a border 3,000 miles long.

The white flags there represent current FAA centers for flight control in those areas which do reach into the border areas so those are the only radar systems that we have of a fixed base nature.

Mr. Skeen. Are the ATC so-called aircraft control radar pickups?

Mr. **Umbarger**. Yes, located at Laredo, Sonora, Midland, Odessa, El Paso, Silver City and Phoenix, the Arizona border here and going over to here.

Currently in that area these radar systems, they are all high altitude and medium altitude systems and therein lies part of the problem in that because they are pulse systems they have to aim one degree above the horizon to cut down scatter that appears from ground objects.

As a result, just look at a point in space and go out 20 miles at a one-degree angle, you have a 2,000-foot altitude that anything could slip under the radar coverage and not be seen.

The stations, there are only six of them, so there is a lot of places where 2,000 feet is accessible and areas of much greater altitude for coming across the border.

To help plug the gap, customs uses a number of P-3 aircraft that they received some time ago and using military E-2C and Air Force AWACS assets when the systems are available to them.

They have a few mobile ground units they use. These are old units that have been around for many years and take a large crew to operate those.

Finally, as you know, there are some tethered balloons they are using in the Gulf area and in the Arizona area. These tethered balloons carry radar systems up on a long wire. We believe the assets we currently have do an excellent job, but they have certain drawbacks. One is that they are very costly to procure and operate and with limited funds are too few in number and are not always where and when they are needed.

We feel the system Wes has developed should be put in. The system that Wes has developed is inexpensive and flexible, it can be moved around to spots we think there is a need, put down and a couple weeks later pulled out and taken away and put down somewhere else.

The system that Wes is going to describe is not intended to replace the assets already placed there. What it will do is complement and add to that capability that already exists.

We would like to think of this system as a gap filler because there are a lot of gaps in there now and this will start to plug the gaps in a flexible fashion.

Wes?

Mr. **Unruh**. On the second page of the handout are some items. I will go through a few of those.

The device itself is a microwave doppler motion device. It senses motion In its area by looking at alterations on a microwave signal.

We have built into it the required electronics to analyze the motion. It is designed to be capable of detection at ground level and up for a low altitude small aircraft sensor system. It can be placed directly on the ground.

In any case its site preparation requirements are minimal. It is a low power device and therefore suitable for possible remote locations and is highly portable and probably can be run successfully on solar power.

This is our third prototype for one of our applications around the lab. As you can see, it is capable of being deployed simply and efficiently. It will be undoubtedly unmanned.

We expect it to be good at border surveillance. We expect several of these items to be networked together so that it can provide improved performance and redundancy. It is simple and rugged because it uses current technology and therefore calibration maintenance problems are alleviated.

In a simple form, it detects the presence of low altitude targets and measures their speeds. In a complex form, it would do ranging also. Its predesign range of about 10 miles is designed to be cost effective in terms of very low cost so that many units can be used and so that portable and mobility is for the future of the system.

That in a nutshell is how it roughly works.

Mr. UMBARGER. On the cost side, as Wes mentioned, it uses existing technology so we feel it is reliable. The parts are available and it is inexpensive to build and operate. We estimate you would probably need between 50 and 100 of these modules and use them as gap fillers when you network the units together to cover a particular area.

In other words, each one is tied to another and can cover the same area, so if one had to be taken out, you would have redundancy built into the system. The components is some fabrication for a single unit. It costs about $17,000 a piece.

By the time you take a fully manufactured single headed module and put it at a site with some site preparation, which is very minimal, because all you need is a poll, with a radio on board that would be $50,000 a piece. If you take 100 modules, you are talking about $5 million for the whole system. You need to add communications and networking capability to it and the networking capability is done very simply with off-the-shelf commercial personal computers and that would probably be about another million dollars, so the total system would cost about $6 million.

This compares, we think, favorably with assets that run in excess of $100 million a piece. On the benefit side, the sensor system would provide unmanned detection at or near our borders and would fill the critical radar gaps.

As the gaps change and move the sensor would be picked up and move with them.

The system would allow early warning for the Customs interdiction people in order to provide interception 15 to 45 minutes on the borders.

Sometimes we don't see the fellows until they are four or five hundred miles inside the border before they come up on the FAA radars.

We have presented three alternatives for consideration. First is a single headed test and evaluation module with no range of a network. This could be customized to this particular application and that would be a 15-month program costing $235,000.

The second alternative we favor would be a three-headed test and evaluation module addressing ranging and networking over short range. An alternative would be a 24-month program with $560,000 each year for two years.

Finally then, as I mentioned, alternative 3 is where you add a medium burst communication system to alternative 2 to provide long-range communications.

We point out that the United States Department of Agriculture and the Soil Conservation Service currently has a network of 570 sites in 11 Western States to measure snow and weather parameters. These are linked by a medium burst communication system.

We are working with the Soil Conservation people on this. Let's stop now and take your questions.

Thank you, Mr. Chairman.

[The statement of Mr. Umbarger follows:]

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TITLE A LOW-ALTITUDE AIRCRAFT SENSOR

AUTHOR(S) C. John Umbarger and Wesley P. Unruh

SUBMITTED TO Statement to U.S. House Appropriations
Subcommittee on Treasury, Postal Services,
and General Government, Washington, D.C.,
April 15, 1986.

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A LOW-ALTITUDE AIRCRAFT SENSOR

Statement
to
House Appropriations Subcommittee
on
Treasury, Postal Service, and General Government

by

C. John Umbarger
Wesley P. Unruh

Los Alamos National Laboratory
Los Alamos, New Mexico

Washington, D.C.
April 15, 1986

A LOW-ALTITUDE AIRCRAFT SENSOR

Los Alamos National Laboratory

** Aircraft Microwave Doppler Motion Sensor

** Unmanned Site and Border Surveillance via Inexpensive Networking

** 10 Mile Range for Typical Light Aircraft

** Low Cost: $17K for Components and Partial Fabrication

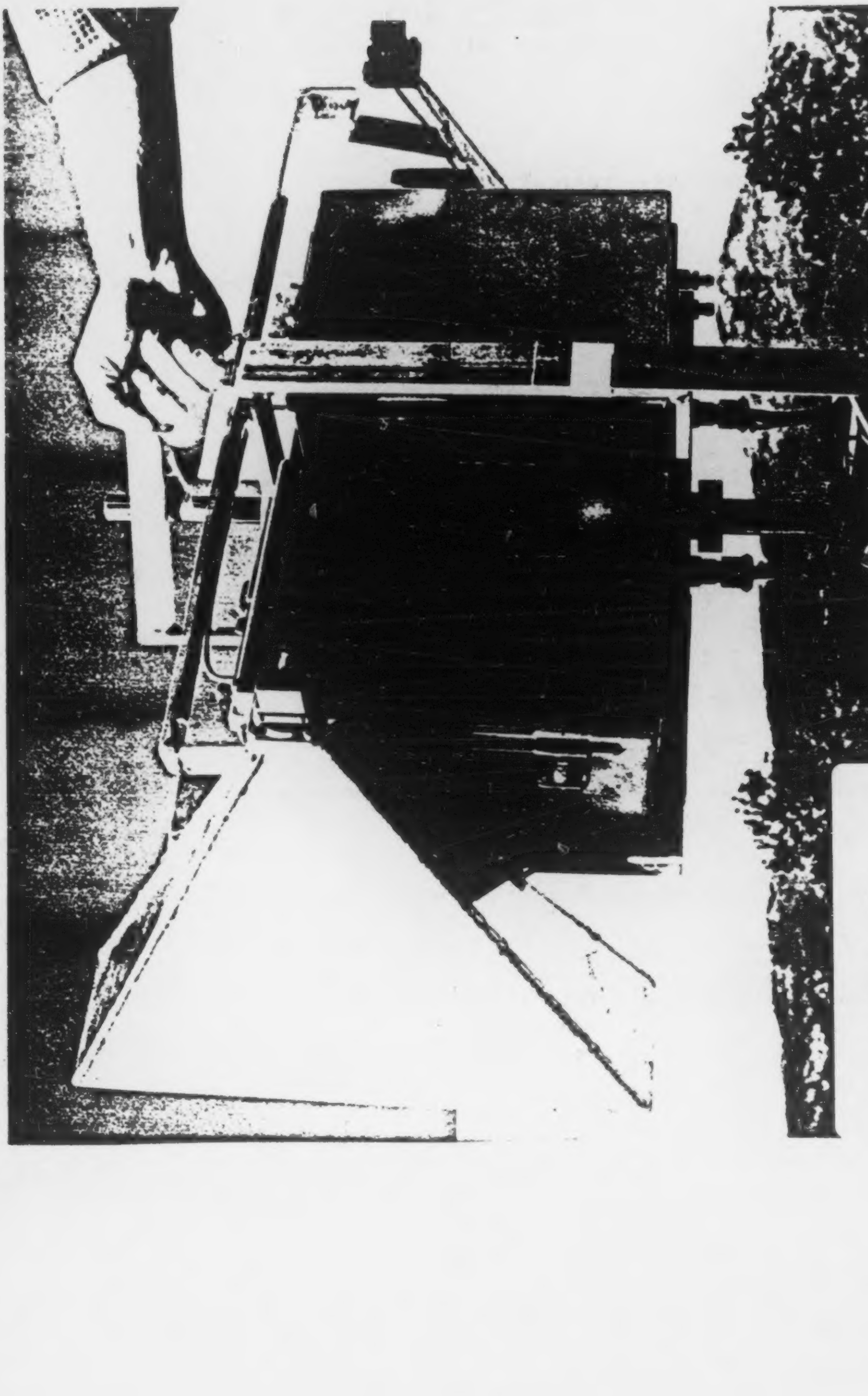
** Low Maintenance and Calibration Requirements

** Detection at Ground Level and Up

** Target Speed, Direction and Ranging Possible

** Helicopter vs Fixed-wing Determination Possible

** Low Power, Suitable for Remote Locations



SENSOR IS SMALL
AND PORTABLE

A Low-Altitude Aircraft Sensor

Los Alamos National Laboratory

Background

Current permanently sited aircraft sensors are generally long range pulsed radar systems requiring large capital outlays. Unless special signal processing is incorporated, ground objects, moving and stationary, "clutter" the signal. To avoid such ground interference, these long-range systems are usually tilted slightly above the horizon by 1 or 2 degrees. Therefore, at reasonably short distances, say 20 miles, an altitude gap of several thousand feet or more in coverage is common, allowing low flying aircraft to penetrate the region completely undetected. The southwestern border of the United States is typical of this situation. At many locations along this 1500-mile border an aircraft can enter U.S. airspace without being monitored at altitudes below 2000 feet. In some areas, this "radar gap" extends much higher.

Aircraft Sensor

The device is a Doppler motion sensor using a 10 GHz microwave system operating in a continuous wave (CW) mode. The Los Alamos prototype instrument is small and portable, weighing approximately 75 pounds. The device was successfully demonstrated in May, 1985, at Kirtland AFB in Albuquerque in collaboration with the Air Force 1550th Combat Crew Training Squadron and U.S. Customs. It was tested against many types of airframes including jets, propeller-driven aircraft, and helicopters. The sensor, using a 5-degree beam width, has a range of approximately 10 miles for typical light aircraft. Because of its CW nature, it is not bothered significantly by ground clutter; accordingly, it detects motion from ground level up. The device can provide speed and type of motion (helicopter vs. fixed wing). Range and bearing can be provided if two or more heads are networked together. A single head, therefore, will measure line-of-sight speed, direction sense (going or coming), and type of motion. Los Alamos is now working on a modification that would allow ranging with a single head.

A complete system would include communication links (via phone line, radio, satellite channels, etc.), on-board microcomputer control, and a central computer for networking multiple heads. Inexpensive personal computers would be more than adequate for the networking task. Since the sensor normally operates at only one watt microwave power or less, remote basing of the sensor heads with solar power is feasible. The maximum radiated RF energy at contact with the device is less than U.S. Government health standards. System status is determined by its own microcomputer and relayed via the communication link.

Cost/Benefit

Components for a single sensor, including some fabrication, can be procured for approximately $17K. No highly sophisticated manufacturing techniques are required. The intrinsically simple design for the sensor indicates very low maintenance and calibration requirements. As mentioned above, standard commercial grade communication and networking links are used.

The device promises to fill the existing radar gap along our southwestern border in a highly cost effective manner. It would compliment sophisticated airborne assets currently in place or proposed, such as tethered balloons, AWACS, E-2C and P-3 aircraft which may not always be available where and when needed. The sensor proposed here could provide continuous surveillance at strategic locations along our border at or near ground level and can be thought of as a trip wire alarm. The system would sense the presence of aircraft as they first penetrate U.S. airspace. Such early warning would allow better preparation for U.S. Customs interception only 15 to 45 minutes beyond our borders. Because of its small size and low power requirements, the sensors can be easily relocated from one site to another as target areas move.

Accordingly, the sensors should be utilized in a modular fashion to fill gaps in our border coverage that are dynamic and shifting by nature. The sensors should be complimentary to existing border surveillance assets such as the P-3 aircraft and tethered balloons. Such an integrated and flexible approach improves significantly the prospect of effectively stemming the flow of airborne contraband across our borders.

Rough capital acquisition costs for deploying these low-altitude aircraft sensors can be estimated quite simply. For an effective and flexible system that can be moved as needed, probably only 50 to 100 units would be needed. Using a figure of $50K as an estimate for sensor procurement and siting each head (site preparation is included but not land acquisition or right-of-way fees), it should cost between $2.5M and $5.0M for the sensors network. Adding communications and networking equipment would cost perhaps another $1M, bringing the total system costs to $6M. This compares favorably with approximately $7M for a single balloon-borne radar system, $30M for P-3 aircraft, and well over $100M for each AWACS, not including operational costs which are considerable.

Sensor Development and Feasibility Program

Alternative 1

Los Alamos proposes a collaborative program with U.S. Customs to determine the feasibility of using this system for low-altitude aircraft intrusion detection of a tripwire nature. The design would provide target speed, including direction sense, and alarms via an inexpensive and highly effective system that can be networked. Los Alamos would build a single-headed test/evaluation module as proof of principle. No ranging is provided here, although this can be accomplished at increased costs (see Alternative 2). Total cost for development and evaluation is $235K, which includes necessary manpower, component procurement, and fabrication. Project duration is 15 months from start of funding. Test and evaluation would be performed jointly with U.S. Customs.

Alternative 2

As a second alternative, Los Alamos proposes an aircraft sensing development program costing approximately $270K per year for two years ($540K total). The final product would be a three-headed surveillance test and evaluation module, including short range communications and networking capability and equipment. Test and evaluation would be performed jointly with U.S. Customs.

Alternative 3

As an addition to Alternative 2 above, Los Alamos would investigate, procure, and integrate a meteor burst communication system that could provide coverage for a very large sensor network if and when such a sensor system is operational. This would complete the low-altitude aircraft sensor module feasibility determination, including sensors, networking, and long range communications. Total cost for this alternative would be $540K plus $390K additional for the communications and networking equipment. This totals $930K, with $660K required the first year and $270K the second and final year. As in the above alternatives, this effort would be in close collaboration with U.S. Customs.

Technology Transfer

Los Alamos would provide necessary documentation for ready technology transfer to commercial manufacturers. It should be noted that the developing group at Los Alamos has devised nine electronic systems over the past seven years that have been transferred to the U.S. commercial sector. This group was presented with a Special Award for Excellence in Technology Transfer by the Federal Laboratory Consortium in 1984. The group has also won four Industrial Research Magazine IR-100 Awards since 1980 for its developments.

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Mr. **Skeen**. Thank you very much.

I am most enthusiastic about your research and will do all I can to support it. This is very interesting and it has been ever since I was first made aware of the research. I understand originally it was designed as weather detection module for tornadoes, is that what it started out to be?

Mr. **Unruh**. That is the way it was conceived.

Mr. **Skeen**. The reason I brought that up is because it seems to me that it has a tremendous flexibility in application. We have a particular problem as you well understand on the Southern border of the United States, particularly in the New Mexico and Big Bend areas of Texas and Arizona. I notice, too, that your system can tell whether it is a helicopter, a fixed-wing aircraft as well as direction, speed and so forth.

Mr. **Unruh**. With the appropriate signal processing on it, it is capable of doing a lot.

Mr. **Skeen**. I was interested in the free option that you have offered. These are preliminary or test-type proposals I assume.

Mr. **Umbarger**. Yes, sir.

Mr. **Skeen**. The communication linkage has been one of the problems, but you have pretty well worked that out.

Mr. **Umbarger**. We think with the medium burst we can have communications. The communication there, that is something we are not really familiar with, but this would aid the problem.

Mr. **Unruh**. We hope we will be in a position to work with this further.

Mr. **Skeen**. I think when you have the cost comparisons, the possibilities of P-3 which everybody is not completely happy with the air detection capabilities, and that is why I appreciate you being here today and talking about this alternative possibility because I think it helps answer a lot of questions.

I have no further questions, Mr. Chairman.

Mr. **Hoyer** [presiding]. Thank you, Mr. Chairman.

I have no questions. Thank you very much.

TUESDAY, APRIL 15, 1986.

LOS ANGELES ALLIANCE FOR EQUITABLE CUSTOMS STAFFING

WITNESSES

TRAVIS MONTGOMERY, DIRECTOR OF TRADE DEVELOPMENT FOR THE PORT OF LONG BEACH, REPRESENTING THE LOS ANGELES ALLIANCE FOR EQUITABLE CUSTOMS STAFFING

JOHN FERRARO

Mr. **Hoyer**. Mr. Montgomery, the Port of Long Beach, Los Angeles. We are pleased to have you and Mr. Ferraro with us.

Mr. **Ferraro**. Mr. Chairman, Mr. Montgomery will give the statement.

Mr. **Montgomery**. Thank you, Mr. Chairman.

I am Travis Montgomery, Director of Trade Development for the Port of Long Beach and I am pleased to represent the Los Angeles Alliance for Equitable Customs Staffing.

Our alliance was formed in 1985 to address the issue of customs staffing in the Los Angeles District, and represents more than a dozen associations, organizations, companies and ports whose customers and members are directly affected by the level of service provided by U.S. Customs.

I want to thank you, Mr. Chairman, and members of the subcommittee for your support in this effort by your appropriation of 150 new positions for the Los Angeles district in fiscal year 1986—

Mr. HOYER. If I might interject for the record, when you refer to "you," I kow that you are being polite to the collective membership of this subcommittee. However, I know also that you emphasized the "you" in a singular sense because the chairman of our committee, of course, is Mr. Roybal, who makes us all realize that we are among equals. But there is no doubt that our subcommittee chair believes that Los Angeles is first among equals and he does an outstanding job on behalf of Los Angeles and southern California and California in general.

I think we ought to have the record reflect to whom that "you" refers.

You may proceed.

Mr. MONTGOMERY. When we began this effort in 1985, based upon the best information we could obtain, the Los Angeles district table of organization called for 558 positions. One year later, this has increased to 624 positions, an increase of 66.

A year ago, the full-time equivalent positions were 543, and today 592, an increase of 49.

In 1985, the actual on-board positions were 534, and today, are 573, an increase of 39.

Mr. Chairman, we recognize the pressures of budget cutting legislation, but we also know that Customs is a revenue-producing agency that cannot do its job without adequate personnel. Your subcommittee and the Congress has continued to support and appropriate funds for 150 new positions, which to date, 39 are actually on board.

For these positions on board, we are grateful, but they are not enough. We need the full complement of positions appropriated. When we first came to you, we were in dire straights in the Los Angeles district. The 150 positions we requested are needed to meet the present traffic demand in the district.

Eighty percent of the Far East and Asian textiles entering this country do so through the West Coast, and over half of this amount through the Los Angeles district. The increase in our traffic flow, plus the added factor of additional quota restrictions, add up to new levels of workload.

This last calendar year was a banner year for the Ports of the Los Angeles district, whose container traffic exceeded that of the Port of New York/New Jersey for the first time. Our customs collections were well over $2 billion, representing over 17 percent of the entire Customs receipts.

The high-tech industries of the Los Angeles area are actually larger than the Silicon Valley, and many of these industries are involved in exports, increasing exodus operation responsibilities for Customs.

Current port development legislation that has passed both Houses, contains provisions for the assessment of a user fee on cargo entering seaports, based upon value. These fees are supported by the Administration, and are to be collected by Customs after a valuation of the cargo. This will place increased responsibilities on Customs personnel, and cannot be accomplished in any timely matter with existing levels of staffing.

We cannot afford to be caught short again, as we were when we appeared before you in 1985. Cargo is increasing daily in the District. Believe it or not, the Christmas season will be starting in the next two months, meaning significant increases in cargo tonnage, and increased Customs demand.

It is imperative that Customs implement the congressional appropriation of 150 new positions. If attention is not given to the staffing issue, we will see our present shippers divert their cargo to other ports, and lose the transportation efficiencies they have developed.

Last year's continuing resolution called for quarterly meetings between the chairman and the Commissioner of Customs. We stand ready to assist you in any way that will help. We desperately need the U.S. Customs Service to comply with the will of Congress and ensure sufficient staff to meet the volume of cargo flowing through our area.

Again, Mr. Chairman, and members of the subcommittee, I thank you for your support and the opportunity of making these comments. If you have any questions, Mr. Chairman, I will attempt to answer them.

Thank you.

Mr. HOYER. Thank you very much, Mr. Montgomery and Mr. Ferraro.

I don't have any questions. I think your testimony is excellent and speaks to the problems that this committee has been dealing with and as you well know both the chairman and the committee have been in the forefront of trying to make the case for proper staffing levels at the U.S. Customs Service on the theory that not only was that necessary for the substantive result to occur, but also that it is a revenue earning agency of government.

I know that the ranking member has joined our chairman, Mr. Roybal, in making this point in the full committee and on the floor very eloquently, so you have two people, Mr. Roybal, our chairman, and our ranking member, Mr. Skeen, who have been in the forefront of fighting for that objective.

Mr. Skeen?

Mr. SKEEN. Thank you, Mr. Chairman. I have no questions. I think you made your point very well and it enhances our awareness of what is going on with the trade with the Pacific Rim countries on the West Coast.

Mr. HOYER. How many councilmen are there?

Mr. FERRARO. There are 15 members. I served as Chairman of the Industry and Economic Development Committee, and we own the Port of Los Angeles as well as the airport and we have the Department of Water and Power so we supply those departments. They earn their money and they are self-sufficient.

Of course, the Port of Long Beach, we work together closely and I agree with all the remarks Mr. Montgomery made. I also would like to point out that Mr. Roybal was a member of the City Council before he became a Congressman. I served as the police commissioner when he was a councilman so my relationship with him goes back a long time.

I came here on behalf of the harbor for another matter. I wanted to come and show my respect and appreciation for Mr. Roybal because he has been very helpful to Los Angeles and Long Beach. We have had severe problems with the airport and we appreciate his help.

We look to the Pacific Rim in the next several decades to do for the West Coast and for Los Angeles and Long Beach what the European markets did for New York in the last century.

It is just beginning and it is not going to stop and there is a need for Customs because we do not want to delay, and as you pointed out, the revenues are there and it pays for itself.

I didn't realize that 17 percent of Customs comes through our area.

Mr. **Hoyer**. We appreciate your comments. I know the chairman is going to be sorry that he was not here personally to be with you.

As you know, a distinguished member of this committee died last week and his funeral was today in New York and that is where most of our senior members on the committee are, but we will certainly pass along your good words to him.

Thank you very much.

Mr. **Montgomery**. Thank you, Mr. Chairman.

Mr. **Ferraro**. Thank you, sir.

Tuesday, April 15, 1986.

FUNDING FOR THE CUSTOMS SERVICE AND INTERNAL REVENUE SERVICE

WITNESSES

ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

PATRICK SMITH, DIRECTOR OF LEGISLATION

PAUL SUPLIZIO, LEGISLATIVE CONSULTANT

Mr. **Hoyer**. At this point I want to call on Mr. Bob Tobias of the National Treasury Employees Union. You can proceed in any manner you prefer. I see you have a comprehensive statement and I see that you have, I am sure, a condensation of that statement. Without objection, the entire statement will be included at this point and time in the record.

Mr. **Tobias**. Mr. Chairman, I would like to praise you, and you, Mr. Skeen, in the absence of Congressman Roybal, for I believe really recognizing the problems with the revenue-producing agencies in this government, both the IRS and the U.S. Customs Service. Last year when the administration was proposing cuts, this committee and ultimately Congress voted increases.

The President, unfortunately, saw fit to veto that legislation and then came back and asked for precisely the amount of money in a supplemental appropriation that had been vetoed in the first measure, unfortunately again, taking the posture that Congress ought to act quickly and fast because of what I believe is lack of foresight. This committee could have stood on principle, but it didn't.

It again recognized the need for the supplemental appropriations for the Internal Revenue Service and attached some additional money for the U.S. Customs Service and voted it out of this committee.

I think in these times when it is very easy for people to be critical of increased spending and to forget that with these agencies increased spending means increased revenue, we appreciate the fact that this committee has been leaders in the process of educating their colleagues and educating the members at large. The problem, of course, doesn't stop with the 1986 supplemental appropriations. We have heard much in the press recently that, for example, in the Intenal Revenue Service that it is fixed. But the fact of the matter is that the IRS is projecting to collect $4.5 billion less in taxes this year than last year.

Also the tax compliance gap is going to continue to increase. We still have the nagging problem that the refunds that are due the taxpayers won't be timely processed by June 1st. The IRS has budgeted $38 billion to pay for the fact that all of those refunds aren't going to be processed on time.

We would like to urge with respect to the Internal Revenue Service that this committee continue its leadership role by recognizing the fact that there is a tax compliance gap, that it is increasing and set policy that we should restore the gap to the 90 percent level, and recognize that it is unacceptable to have an 81.6 tax compliance gap that continues to decline.

We believe that the way that this tax compliance gap ought to be attacked is really three ways:

First, we need more revenue agents to conduct more audits. We need more revenue officers to collect more taxes. We need more people in taxpayer service to answer legitimate inquiries of taxpayers, and we suggest that Congress' enact a tax amnesty program, a program that would allow for a one-time amnesty for non-filers to to get on the rolls so that we would have them on the rolls, they would be liable to pay interest but they would not be liable for civil and criminal penalties.

We believe that it is important that this tax compliance gap be attacked, and attacked now. My fear is that if Congress doesn't attack this gap, we are going to lose the income tax system as a method of raising revenue, because when you fall much below losing $1 in every five that ought to be paid, the geometric decline is staggering.

With respect to the U.S. Customs Service, I would like to point out that Congress, as you know, is going to be conducting a major review of the nation's trade laws. We think that enforcement should be a part of that review. As you know, trade laws are not self-enforcing. For example, under the multifiber arrangement, Customs keeps track of over 600 different countries.

The voluntary restraints agreements are in effect with more than 20 countries under the President's steel program. Under the generalized system of preferences, more than 3,000 products from

103 developing countries are eligible to enter the U.S. at lower rates of duty. The Caribbean Basin Initiative authorizes duty-free treatment for a variety of products from the 21 nations and territories of that region. Anti-dumping and countervailing duty orders are on the upswing; these must be enforced by Customs. Virtually all of the statistical data on which trade policy is based is obtained by Customs.

Despite these growing enforcement responsibilities, OBM has recommended severe cuts in U.S. Customs Service budgets for everyone of the last six years. OMB can't see fit, it seems to me, to recognize the responsibility to the trade community nor the fact that the amount of drugs that are coming into ths country—we are only looking at 98 percent of the computerized shipments that are coming into this country. We are losing jobs because of the fact that the goods that come into this country shouldn't be coming in to the country.

We certainly support the 1986 urgent supplemental bill approved by this committee that would add $35 million and 777 positions, yielding $1.3 billion of revenue.

We urge that in the budget for 1987 that this committee restore the cuts that came about as a result of Gramm-Rudman and that we add 600 additional positions.

Finally, we would like to point out that Customs continues towards centralization without adequate assessment of the consequences. It continues to plan to consolidate ports, districts, and duty assessment locations despite repeated injunctions from Congress not to do so. By not replacing import specialists lost through attrition, hiring replacements only in certain favored ports, shifting the entry workload to those ports, and retaining a single import specialist or entry clerk at less-favored ports to placate local business communities, Customs continues to move toward centralization.

We urge this subcommittee to ban the use of funds for any administrative expenses associated with planning or executing such activities. Congress should reaffirm its clear intention that Customs provide a full staff complement at all existing ports, including increasing staff as required to process growing workload.

I sincerely appreciate the opportunity to appear and testify in behalf of the U.S. Customs Service employees and the Internal Revenue Service employees, and I would be pleased to answer any questions you might have.

[The statement of Mr. Tobias follows:]

NTEU
The National Treasury Employees Union

Summary Statement

Of

Robert M. Tobias
National President
National Treasury Employees Union

To The

Subcommittee on

Treasury, Postal Service & General Government

Committee on Appropriations

Hon. Edward R. Roybal, Chairman

Appropriations for the

Internal Revenue Service and U.S. Customs Service

Fiscal Year 1987

U.S. House of Representatives

Washington, D.C.

April 15, 1986

1730 K Street, N.W. • Suite 1101 • Washington, D.C. 20006 • (202) 785-4411

Mr. Chairman and Members of the Subcommittee:

I am Robert M. Tobias, National President of the National Treasury Employees Union. Our union is the exclusive representative of over 120,000 Federal workers, including virtually all employees of the Internal Revenue Service and U.S. Customs Service. I am accompanied today by Patrick Smith, NTEU Director of Legislation, and Paul Suplizio, Legislative Consultant.

The most serious problem facing the nation's tax system today is the need to stem the fall in voluntary compliance. IRS projects voluntary compliance to fall from 81.6 percent this year to 79 percent by 1990. This amount may not appear large, but it is enormous when you consider that for each 1 percent decline, $7 billion is lost to the Treasury. Viewed in historical perspective, compliance was around 90 percent in the sixties, fell to 84 percent by 1975, and has been declining steadily since then. As a result, the tax gap -- the difference between taxes legally owed and those voluntarily paid -- stands at $100 billion today and will rise to $159 billion by 1990.

There has been a hardening of cynicism toward their tax obligation on the part of many of our citizens. In the words of the General Accounting Office, there is a trend toward contempt and abuse of the system that undermines the compliance of others. An opinion survey conducted for IRS by Yankelovich, Skelly and White found that 20 percent of the sample admitted to cheating on their taxes, and a third believe that it is all right to cheat because others do so. The belief that others cheat and get away with it is the basic reason for non-compliance.

The failure to confront this problem is a national failure -- a failure for which the present Administration bears a large burden of responsibility. Not until after it had plunged the tax system to its lowest performance in history, not until after the humiliating events of the last filing season, not until millions of irate citizens raised their voices in indignation, did the Administration come forward with a sensible budget for IRS in the current fiscal year.

We believe there is still time to restore the system's health but, quite frankly, Mr. Chairman, we have been saying this for six years and time is slipping away.

We must place high on the national agenda the goal of halting the decline in voluntary compliance. And we must provide IRS with the resources necessary to achieve this goal.

We believe that the Federal government should immediately announce a comprehensive program to strengthen enforcement of the tax code and bring non-compliant taxpayers onto the tax rolls once more. Essential components of the program we envision are:

- a one-time tax penalty amnesty whereby taxpayers who owe money may avoid civil and criminal penalties by paying what they owe plus interest within a specified amnesty period;
- providing IRS with additional enforcement resources, particularly in Examination, Collection, and support staff, to increase enforcement actions against non-compliant taxpayers before and after the amnesty period;
- change the tax code to give IRS better enforcement tools and to increase penalties for non-compliance when the amnesty is over.

We believe stronger enforcement can work in tandem with a one-time amnesty to halt the fall in compliance. Both would result in large additional revenues accruing to the Treasury.

NTEU has computed that just keeping the compliance rate from falling will yield $55 billion over 5 years (Table 12). An additional $20 billion would result from enforcement actions. We should also include part of the $100 billion annually that is now going uncollected, but would be paid by taxpayers as a result of the amnesty.

It is unrealistic to expect that the entire $100 billion would come in if amnesty were declared, as that would imply 100 percent compliance. We estimate that $40-$50 billion could be recovered under an amnesty program, as this figure is consistent with 90 percent compliance.

Adding the sums I have mentioned--$55 billion from improved compliance, $20 billion from stronger enforcement, and $40-$50 billion from amnesty, yields a total of $115-$125 billion in estimated additional revenue from the program I have outlined. This is the gain if we just keep compliance from falling. If we can raise compliance generally by five percentage points, from 81.6 to 86.6 percent, an additional $35 billion a year would result.

We believe the fact that we have a voluntary compliance system in this country makes amnesty feasible. IRS now has detailed records on all citizens' incomes and filing status, and can identify those who are non-compliant. However, we must face the fact that IRS will never have sufficient resources to deal with all the non-compliant population. By offering each taxpayer a chance to pay up without penalty, we believe a large number can be brought back into voluntary compliance with the law.

Strengthening tax enforcement by examining more returns, collecting more past-due accounts, and putting abusive tax shelters out of business should not be viewed as an imposition on our citizens. I know that many people -- perhaps including some in this room -- believe that IRS should not be "unduly intrusive" into their lives. That philosophy has led to six straight years of declining audit coverage and rampant cheating. In the 1960's, audit coverage was more than 5% and yet our freedoms did not suffer. Effective tax enforcement sends the message that those who do not pay their fair share will be caught and required to pay. It is a bulwark of voluntary compliance.

We welcome the Administration's supplemental request for $340 million for FY 1986. After deducting the Gramm-Rudman cut of $157 million, there will be a net addition to IRS resources of $183 million and 7,000 average positions. These resources are urgently required to assure efficient processing of 6 million additional returns and refunds, to strengthen taxpayer services, and to commence hiring 2,500 additional Revenue Agents and Tax Auditors that are sorely needed and long overdue.

Unfortunately, OMB has a fleeting attention span, because its FY 1987 request for IRS is a reversion to the discredited policies that led to the 1985 fiasco. The evidence on this point is clear. In this budget, OMB authorizes four important program initiatives -- a revenue initiative to strengthen Examinations, a Tax Shelter Initiative to clear up the backlog in Appeals, a Document Matching Initiative to improve collections from underreporters, and an ADP Initiative to strengthen returns processing. These initiatives are essential and long overdue. To implement them, and allow for processing additional returns, 4,300 average positions are required.

Yet the budget provides a net increase of only 1,360 average positions. The remaining resources are to be obtained from within IRS, by reducing Returns Processing. Obviously, the folly of ratcheting the Returns Processing staff level down again escapes OMB. We are told that workload backlogs will be cleaned up this year, so the positions will not be required. But there will be 3.5 million additional returns and supplemental documents to be processed in FY 1987. We are strongly of the opinion that staff in Returns Processing is still inadequate and should not be reduced. Staff completing one-time assignments should be directed to other work. GAO, in earlier reports, has criticized the inefficient practice of ratcheting staff levels up and down in the face of increasing workload. To revert to a policy of cannibalizing some programs to pay for others is sheer folly.

There are two other glaring deficiencies in this budget. First, the number of taxpayers assisted through toll-free telephone, walk-in, and correspondence is projected to fall from 50 to 45 million. There is no justification for such a decrease, particularly if tax reform should be enacted this year.

Second, the Collection staff is to be cut 1,500 positions and the number of Revenue Officers working past-due accounts is to be held constant for the fourth year in a row, despite mounting caseloads. In view of the increasing number of delinquent accounts, the total of more than $30 billion owed in such accounts, and the return of $20 for each dollar spent in Collection, we believe there is no justification for ratcheting down the staff level.

To sum up the IRS budget for FY 1987, NTEU recommends restoration of 2,700 positions to maintain an adequate Returns Processing staff, addition of 500 positions to Taxpayer Service to assure that 50 million taxpayers will again be assisted next year, and restoration of 1,500 positions scheduled to be cut from Collection so that 316,000 more taxpayer delinquent accounts can be worked. These additions would cost $131 million, but would bring in $570 million in additional revenue annually.

U.S. Customs Service

I'd like to turn now to the U.S. Customs Service. This year Congress will conduct a major review of the nation's trade laws. Enforcement should be an important part of that review. Our trade laws are not self-enforcing; they must be policed in order to be effective.

Under the Multifiber Arrangement, Customs keeps track of over 600 different countries. Voluntary Restraint Agreements are in effect with more than 20 countries under the President's Steel Program. Under the Generalized System of Preferences, more than 3,000 products from 103 developing countries are eligible to enter the U.S. at lower rates of duty. The Caribbean Basin Initiative authorizes duty-free treatment for a variety of products from the 21 nations and territories of that region. Anti-dumping and countervailing duty orders are on the upswing; these must be enforced by Customs. Virtually all of the statistical data on which trade policy is based is obtained by Customs.

Despite these growing enforcement responsibilities, OMB has recommended severe cuts in U.S. Customs Service budgets for every one of the last six years. ① Without any doubt, the Administration bears the chief responsibility for the rampant commercial fraud that now exists.

Our estimate is that commercial fraud now amounts to $40 billion annually, including $2 billion in counterfeit goods, and more than $25 billion in unreported products that enter in shipments that are not inspected. Today, 98 percent of containerized shipments enter the country without inspection. It is not surprising that our markets are awash with illegal imports that not only cost American jobs but endanger the health and safety of our people.

Based on research conducted by the Commerce Department, NTEU has been able to estimate the number of jobs lost from illegal imports in 1984. We found that 144,000 jobs were lost in textiles and apparel, 76,000 in electronic products, 42,000 in motor vehicles, 32,000 in iron and steel, and 50,000 in leather goods industries due to illegal imports alone. All told, nearly a half million jobs have been taken from American workers by fraudulent importers and trading companies. The Administration bears the entire responsibility for this disgraceful situation.

NTEU supports the FY 1986 Urgent Supplemental as approved by the House Appropriations Committee, which restores the Gramm-Rudman cut of $35 million and 777 positions, and will result in additional budget receipts of $1.3 billion during FY 1986-1990.

The President's budget request for FY 1987 would result in a reduction in force of 770 Customs officers, including 400 Inspectors and 150 Import Specialists, despite the fact that commercial fraud and narcotics traffic are at an all-time high. We believe this budget should be rejected.

For FY 1987, NTEU recommends that $56 million and 1,547 positions be added to the Administration's request to maintain the level of the FY 1986 C.R., and that an additional $21 million and 600 positions be provided to adequately enforce the nation's drug and trade laws. Of the 600 new positions, 134 are required to collect billions of dollars in new export and import fees earmarked for the harbor maintenance trust fund established by the port and waterways bills (H.R.6 and S. 1567) that have passed both bodies. The remaining positions would be applied to commercial cargo enforcement, where Customs is seriously understaffed, and would yield additional revenue of $735 million during FY 1987-1989.

Lastly, Customs continues toward centralization without adequate assessment of the consequences. It continues to plan to consolidate ports, districts, and duty assessment locations despite repeated injunctions from Congress not to do so. By not replacing import specialists lost through attrition, hiring replacements only in certain favored ports, shifting the entry workload to those ports, and retaining a single import specialist or entry clerk at less-favored ports to placate local business communities, Customs continues to move toward centralization. We urge this subcommittee to ban the use of funds for any administrative expenses associated with planning or executing such activities. Congress should reaffirm its clear intention that Customs provide a full staff complement at all existing ports, including increasing staff as required to process growing workload. ②

Mr. Chairman, we appreciate the opportunity to appear before you today on behalf of the thousands of employees who collect the revenue of the Federal government and enforce the trade laws of our country. I would be happy to answer any questions.

TABLE 1

INTERNAL REVENUE SERVICE FY 87 BUDGET REQUEST AND NTEU RECOMMENDATION

	FY 86 CONTINUING RESOLUTION AND SUPPLEMENTAL[1]		FY 87 BUDGET REQUEST		INCREASE OR DECREASE		NTEU RECOMMENDED ADDITION TO RESTORE TO FY86 LEVEL AND PROVIDE FOR WORKLOAD GROWTH[2]		NTEU RECOMMENDED APPROPRIATION FOR FY 1987	
	($000) Amount	Average Positions	($000) Amount	Average Positions	($000) Amount	Average Positions	($000) Amount	Average Positions	($000) Amount	Average Positions
Salaries and Expenses	89,958	2,071	95,147	2,044	+5,189	-27			95,147	2,044
Processing Tax Returns	1,213,769	28,944	1,262,902	27,327	+49,133	-1,617	+68,325	+2,700	1,331,227	30,027
Examination and Appeals	1,427,121	35,923	1,603,162	38,974	+176,041	+3,051			1,603,162	38,974
Investigation Collection & Taxpayer Service	1,095,289	26,786	1,136,581	26,739	+41,292	-47	+62,550	+2,000	1,199,131	28,739
TOTAL	3,826,137	93,724	4,097,792	95,084	+271,655	+1,360	+130,875	+4,700	4,228,667	99,784

[1] Includes Supplemental Appropriation of $340 million and 6,950 positions, and Gramm-Rudman cut of $156.6 million.

[2] Includes restoration of 2,700 positions eliminated on assumption that current filing and processing backlog problems have been corrected, additional 500 positions for taxpayer service to maintain FY 85 level of assistance (50.2 million taxpayers assisted), and 1500 positions for collection to maintain FY 1985 staff levels and collect $570 million annually in additional revenue from delinquent accounts.

TABLE 2

NTEU FY 87 RECOMMENDATION AND NET REVENUE GENERATED, FY 1987-FY 1991

	Recommended Additions for FY 87		Additional Revenue Collected		Cost FY 87 -FY 91	Net Increase in Revenue FY 87-91
	(Staff-Years)	Cost (Millions)	FY 87 (Millions)	FY 87-91 (Millions)	(Millions)	(Millions)
Processing Tax Returns[1]	+2,700	68.3	-0-	-0-	342	-342
Collection[2]	+1,500	46.9	570	2,850	235	+2,615
Taxpayer Service[3]	+500	15.6	-0-	-0-	78	-78
TOTAL	+4,700	130.8	570	2,850	655	+2,195

[1] NTEU would avoid at all cost ratcheting staffing levels down again and run the risk of being unable to process the 3.5 million additional returns and supplemental documents anticipated in FY 1987. Unreasonable staff reductions were a principal cause of recent failures. Staff completing one-time assignments should be redirected to other work and by no means reduced.

[2] NTEU addition would permit closing 316,000 more taxpayer delinquent accounts per year than the Administration's program. This would result in collecting addtitional revenue of $570 million annually.

[3] NTEU program would permit assisting 50 million taxpayers, 5 million more than the Administration's program.

TABLE 3

INTERNAL REVENUE SERVICE STAFFING COMPARED TO WORKLOAD

1975-1987

Illustrating Ratcheting of Stafffing Levels that GAO Has Criticized as Inefficient

	Total Staff Positions	Returns Processing Positions	Primary Returns Filed (000)	Information Returns (000)
1975	82,339		125,096	
1976	84,264		123,100	
1977	83,743		127,800	
1978	85,329		129,100	
1979	86,168		134,700	
1980	87,464	28,744	137,382	547,000
1981	86,156	27,481	138,763	645,000
1982	82,857	23,919	162,814	664,000
1983	83,605	20,533	171,174	678,000
1984	87,635	21,743	164,626	692,000
1985	92,254	26,075	170,021	783,000
1986	93,724	28,944	175,868	893,000
1987	95,084	27,327	178,622	931,000

TABLE 4

INCOME TAX GAP, 1974 - 1990

Tax Year	Income Tax Gap[1] ($Billions)
1974	29
1975	39
1980	62
1982	81
1986	92
1990	159

SOURCE: IRS; 1990 figure quoted from IRS sources in *Fortune*, April 14, 1986, p.84.

[1] Difference between taxes legally owed and voluntarily paid.

TABLE 5

VOLUNTARY COMPLIANCE RATE, FY 1974 - FY 1991

Fiscal Year	Voluntary Compliance[1] (%)
1974	84.0
1980	82.1
1986	81.6
1991	79.0

SOURCE: IRS Data for FY 74, 80, and 86; 1991 estimate based on IRS Tax Gap projection and income tax receipts in _Budget of U.S. Government for FY 1987_.

[1] Percent of taxes legally owed that are voluntarily paid.

TABLE 6

SEPARATION RATES FOR KEY IRS OCCUPATIONS

Fiscal Year	Revenue Agents	Revenue Officers	Tax Auditors
1967	10.4	11.1	12.4
1968	10.4	11.0	11.0
1969	8.9	7.2	7.5
1970	8.6	7.9	9.1
1971	6.8	8.2	12.0
1972	6.6	7.8	10.3
1973	7.8	8.3	10.6
1974	6.4	7.4	11.7
1975	6.4	6.6	9.6
1976	4.7	6.0	7.0
1977	7.5	7.3	9.5
1978	8.6	8.4	10.9
1979	10.5	9.3	10.0
1980	11.6	9.9	11.2
1981	8.1	8.0	8.5
1982	7.5	8.0	8.6
1983	5.5	7.1	6.7
1984	7.4	8.3	9.3

SOURCE: INTERNAL REVENUE SERVICE

Table 7

INTERNAL REVENUE SERVICE
Employment History
Selected Occupations
(Average Positions)

	Revenue Agents	Tax Auditors	Revenue Officers	Special Agents	Appeals Officers
Fiscal Year					
1981 Actual	13,272	4,079	5,323	2,751	835
1982 Actual	13,554	3,888	6,028	2,685	821
1983 Actual	13,613	3,821	7,301	2,593	891
1984 Actual	13,405	3,459	7,527	2,790	1,031
1985 Actual	13,554	3,513	7,387	2,821	1,050
1986 Authorized	14,671	3,761	7,389	2,791	1,101
1987 Estimate	15,866	3,796	7,393	2,791	1,240
Change					
Number					
87 over 86	1,195	35	4	0	139
87 over 81	2,594	-283	2,070	40	405
Percent					
87 over 86	8.15%	0.93%	0.05%	0.00%	12.62%
87 over 81	19.54%	-6.94%	38.89%	1.45%	48.50%

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TABLE 8

NUMBER OF TAXPAYERS REQUESTING IRS ASSISTANCE

VS. NUMBER ACTUALLY ASSISTED

FY 1976-1987

(In Millions)

FY	(1) Number of Taxpayers Filing Individual Returns	(2) Number of Taxpayers Requesting IRS Assistance[1]	(3) Percent Requesting Assistance[2]	(4) Number of Taxpayers Assisted[3]	(5) Percent Assisted[4]
1976	85.6	45.0	52%	41.9	93%
1977	86.4	47.0	54%	40.2	86%
1978	87.4	44.7	51%	38.0	85%
1979	90.8	48.6	53%	41.0	84%
1980	93.2			43.0	
1981	94.0			44.8	
1982	95.5			47.4	
1983	95.3			47.1	
1984	96.3	60.8	63%	50.1	82%
1985	99.4	62.6	63%	50.2	80%
1986	103.8	65.4	63%	45.7	70%
1987 (Administration proposal)	105.5	66.5	63%	45.7	69%
1987 (NTEU Alternative)	105.5	66.5	63%	50.3	76%

TABLE 8 Cont'd.

1 This column reflects demand for taxpayer service. It includes IRS' estimate of the actual demand on the toll-free telephone system, not just the number of calls answered. For example, in FY 84 demand was 52 million while calls answered were 41.3 million. Taxpayers seeking walk-in and correspondence assistance are also included. After 1984, the figure is projected by taking 63% of the number of filers.

2 Column 2 as percent of column 1.

3 Source: IRS budget submissions. Data cover toll-free telephone, walk-in, and correspondence. Figures do not include tele-tax or outreach programs.

4 Column 4 as percent of column 2.

TABLE 9

EXAMINATION OF TAX RETURNS

FY 1976-1987

	Examination Staff-Years	Number of Examined Tax Returns (000)	Percentage of Tax Returns Examined
1976	28,100	2,285	2.6%
1980	28,412	2,179	2.1%
1981	27,402	1,930	1.84%
1982	28,117	1,731	1.63%
1983	27,638	1,676	1.56%
1984	28,050	1,418	1.31%
1985	29,009	1,380	1.34%
1986 (EST)	29,922	1,271	1.14%
1987 (EST)	32,484	1,596	1.42%

TABLE 10

RETURNS EXAMINED AND AUDIT COVERAGE
FY 1978- FY 1984

	INDIVIDUAL		PARTNERSHIP		CORPORATION	
Fiscal Year	Number Examined	Audit Coverage (%)	Number Examined	Audit Coverage (%)	Number Examined	Audit Coverage (%)
1978	1,845,242	2.16	27,828	2.44	147,340	8.01
1979	1,844,986	2.11	30,474	2.55	142,937	7.44
1980	1,833,858	2.02	23,041	1.79	133,593	6.48
1981	1,644,104	1.77	22,113	1.62	107,363	5.05
1982	1,455,256	1.55	23,084	1.63	107,705	4.73
1983	1,427,660	1.50	36,115	2.41	85,980	3.64
1984	1,215,927	1.27	25,086	1.57	65,803	2.66

TABLE 11

Delinquent Accounts and Collections

FY 1976 - FY 1985

	Number of Taxpayer Delinquent Accounts[1] (millions)	Revenue in TDA Active Inventory ($Billions)	Total Revenue in all Delinquent Accounts ($Billions)	Total Collection (Billions)
1976	.6	1.7		3.5
1980	1.2			
1981	1.4			
1982	2.0			
1983	2.0			
1984	1.9	8.5	30.1	
1985	1.7	9.1		18.3

[1] Delinquent accounts in active inventory being worked by revenue officers. Does not include accounts in notice process and installment agreements which are about one and one-half times the number of accounts in active inventory.

Source: IRS Budgets; GAO for total delinquent account revenue

TABLE 12

COMPUTATION OF REVENUE LOSS FROM FALL IN VOLUNTARY COMPLIANCE

FY 87-91

	Compliance[1] Rate (%)	Difference From FY 86	Revenue Loss at $7 Billion Per Percent ($Billions)[2]
1986	81.6		
1987	81.1	.5	3.5
1988	80.6	1.0	7.0
1989	80.0	1.6	11.2
1990	79.5	2.1	14.7
1991	79.0	2.6	18.2
Total			54.6 (over 5 years)

Direct enforcement revenue from 5,000 additional positions in Exams, FY 1988-91 .... 20.6 (over 5 years)[3]

Total Revenue Gain from Action to Keep the Compliance Rate From Falling .... 75.2 (over 5 years)

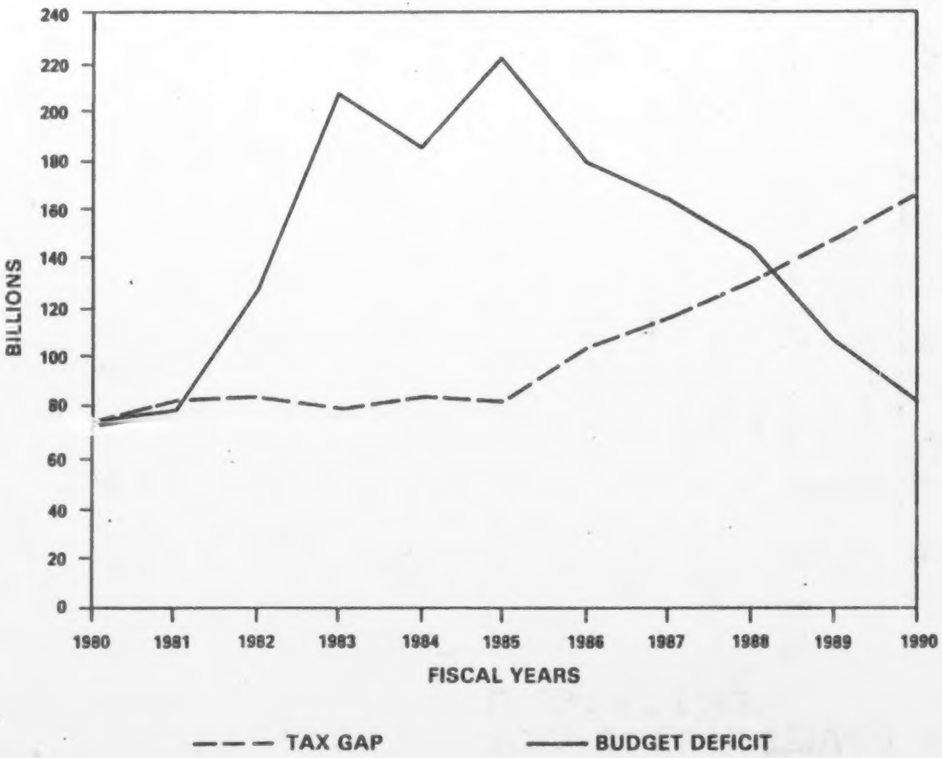
[1] Budget of U.S. Government FY 1987, p. 4-3 projects income tax receipts to FY 1989, and have been extrapolated to FY 1990. Tax receipts plus tax gap equals taxes owed. Tax receipts divided by taxes owed equals compliance rate. Tax gap of $159 billion in 1990 corresponds to compliance rate of 79%. Since returns are filed in the next fiscal year, the rate is assumed to apply to FY 1991.

[2] FY 1989 income tax receipts of $567.3 billion plus $145 billion tax gap equals taxes owed of $712 billion, or $7 billion per percent. FY 87-91 average is also $7 billion per percent.

[3] IRS Budget estimates yield of $10.3 billion over 5 years for 2,500 additional positions.

CHART 1

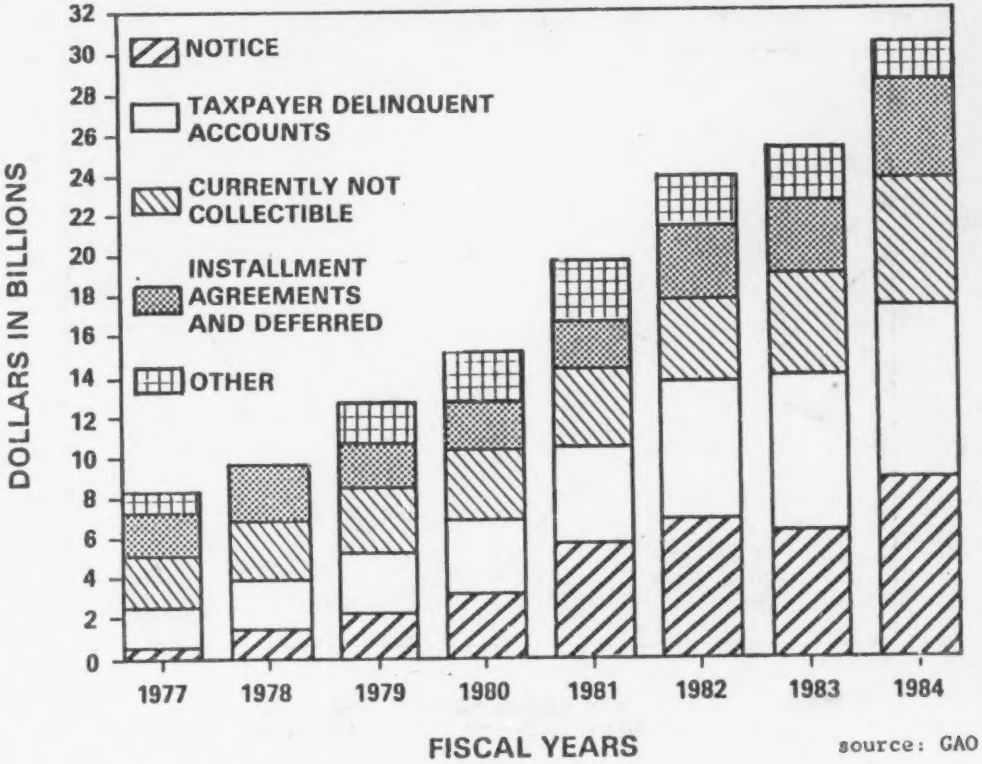
LEGAL SOURCE TAX GAP COMPARED TO BUDGET DEFICIT—1980 TO 1990



source: GAO

CHART 2

STATUS OF TAX ACCOUNTS RECEIVABLE AT FISCAL YEAR END



source: GAO

Mr. HOYER. Bob, I don't have any questions, but I do want to say that I was listening to you and reading your statement at the same time. They are very comprehensive. This is good material in terms of explaining what is going on, particularly as it relates to these two revenue agencies wherein the IRS failure to be able to adequately encourage people to voluntarily comply, we know that any system that is unable to check compliance ultimately will lead people not to voluntarily comply, and if they think they will check them, there is a tendency to comply, there is a decrease in compliance, and it will cost the government $159 billion by 1990. That could make a very, very substantial contribution to the solving of the budget deficit problem and accomplishing Gramm-Rudman.

If we could do it this way, that is, have people pay who owe taxes, effectively, with what we have seen in growth pattern, that means we are already at the 1991 target.

Mr. TOBIAS. That is correct.

Mr. HOYER. We could get down to zero if we just did that.

Mr. TOBIAS. That is correct.

Mr. HOYER. Have you projected how much that would cost us to get there? Maybe you did in the statement and I didn't see it.

Mr. TOBIAS. Actually, if you look at just what we are projecting for this year, I believe that if you look at Table 1 attached to the statement—actually, Table 2 attached to the statement—it shows that these were the positions that we are recommending be hired for this next year; over a five-year period it would cost $655 million and it would yield $2.8 billion.

Now, in terms of the total——

Mr. HOYER. I see the $2.8 billiion. So that is, what, a 4½-to-1 ratio?

Mr. TOBIAS. But the real attack on the tax compliance gap, Mr. Chairman, has to be a plan, a planned program over the next years. What we see now is just a sort of a "running to stick one's finger in the dike" approach of management in the Internal Revenue Service, dictated by this administration. Last year we had a disastrous tax filing season, so now we see them running to the Hill and saying we need 7,000 people to process taxes. That is good, and we are doing better, but yet next year in the 1987 budget they recommend that 2,700 people be cut in tax processing even though we have an increase in tax returns and information returns, so we run the risk of another problem in 1987.

We see that audits are low, down to 1.1 percent, so the administration suggests that we hire 2500 revenue agents for next year. That is well and good, but what about 1988, 1989, 1990, 1991? What kind of a program does IRS have to attack this tax compliance gap on more than a year-to-year basis? We hear great criticism in the private sector of corporations that live on their quarterly financial statement. That is what the Internal Revenue Service is doing. We need a five-year plan on how to increase voluntary compliance. We urge this committee direct this administration to do that.

Mr. HOYER. Do you have a proposal of that type? Not necessarily a five-year plan, but a proposal urging a five-year plan?

Mr. TOBIAS. Yes; it is part of the large statement. What you have is a shorter statement. We have two statements, one for IRS and one for the Customs that are over 50 pages that we have for the record, and those longer statements do have a program in them.

Mr. **Hoyer**. We will call that to the attention of the committee staff and perhaps they can review that and bring that to our attention. And we may want to include some language within the bill or, if not in the bill, in the committee report urging the IRS to undertake review of whether such a plan is feasible, and if so, how to implement it and how much it would cost to implement such a plan.

Thank you. Mr. Skeen.

Mr. **Skeen**. It is a very interesting approach. Maybe I don't agree totally with the approach, but the end results are both the same. The goals we have been trying to achieve are common ones. I have a lot of questions about a tax amnesty plan. For one thing, would it be workable on a national level, because I think you have no system for that kind of program at all. I would like to see a proposal—that would implement some sort of an amnesty plan, however right now that meets with total rejection from the IRS. We agree on the same goal that $80 billion this year is too much to leave uncollected.

Mr. **Tobias**. It is kind of interesting. Those who have taken a public position at the Internal Revenue Service, the Commissioner has said that he is opposed to tax amnesty on the basis that it somehow encourages——

Mr. **Hoyer**. Further recalcitrance.

Mr. **Tobias**. But that is not a generally held position below that level. There is a lot of disagreement in the agency itself, and certainly in the states we have seen some success with a tax amnesty program.

As for us, we are not looking so much at the amount of money that would be captured, although I believe there would be substantial sums of money recaptured, it is mostly to get the non-filers on the rolls. And if you had a pool say of 100 non-filers in a particular area and you got two or three of them to file, then we could track down the others if we had more resources and if we increased the penalties along with the program.

Mr. **Skeen**. I don't argue with that. It has great appeal. But let me tell you something. Someone has failed to file on the Federal level; if you think they are going to walk in under a federal amnesty plan and put their name on this, because aside from the $80 billion we have got some $14 billion or so that we are loosing in illegal sources. I think you have a tough selling job. I am not saying it can't be done, but if you have a plan I would like to see that too. Thank you.

Mr. **Hoyer**. Thank you.

Tuesday, April 15, 1986.

INGREDIENT LABELING AND CALORIE LABELING OF ALCOHOLIC BEVERAGES

WITNESSES

BRUCE A. SILVERGLADE, DIRECTOR OF LEGAL AFFAIRS, CENTER FOR SCIENCE IN THE PUBLIC INTEREST

MITCHELL ZELLER, ATTORNEY, OFFICE OF LEGAL AFFAIRS

Mr. HOYER. Bruce Silverglade, Center for Science in the Public Interest. We appreciate your being here, Mr. Silverglade. We apologize for the fact that our chairman is not here. But you heard that we had a death of great significance in the Congress and many of our Members are attending the funeral in New York. Please proceed.

Mr. SILVERGLADE. I have a prepared statement which I would like put in the record. With me is Mitchell Zeller, an attorney in our Office of Legal Affairs.

The center is a nonprofit consumer organization and our focus has been public health policy primarily in the food, drug and alcoholic beverage area. We want to talk about two provisions that have been in the current appropriations law for several sessions. Section 508, which prohibits BATF from requiring ingredient labeling of alcoholic beverages unless ordered by a final court order in the Federal Court of Appeals.

The history of this is very interesting, I think. Ingredient labeling of alcoholic beverages is an essential public health measure. Every consumer product has ingredients listed on it, and one of the reasons is that there are more than 1½ million Americans who are allergic or otherwise medically sensitive to additives or the basic ingredients used in alcoholic beverages. For that reason the FDA throughout the last decade had a policy of encouraging ingredient labeling of alcoholic beverages, but they don't have the jurisdiction.

BATF required it in 1980 but the regulation was never fully implemented, because the administrator in 1981 rescinded it before the industry had time to change the label.

We sued BATF at that point and have been in court ever since. Somewhere along the line this committee became involved and first tried to say that no funds shall be available to implement ingredient labeling regardless of what the courts order. And Mr. Obey sponsored an amendment on the House floor in 1983, and that changed the wording of the provision to the current statement, that no funds are available unless the final court order requires it. We are just about at that time of a final court order. We have been to the Federal District Court in Washington twice; we have been successful both times.

The District Court has ordered the regulation reinstated. The Treasury Department appealed at one point, and the Wine Institute appealed. In an earlier stage the Distilled Spirits Council intervened on the side of the administration and appealed and as a result the case bounced back from the U.S. Court of Appeals and back to the District Court. We were successful again in October last year. The court ordered this reinstated. By April there should be ingredient labeling of alcoholic beverages. But when the final appeal was taken, the Court of Appeals had to stay the order because of language inserted in the bill saying that no funds are available to implement the court order unless that held on appeal.

We hoped last year, we said that that provision should never be in the bill because it was holding up an essential public health regulation. It was in the bill. We are here to report that it has worked its course. We are approaching a final court order. We are confident that the District Court order will be upheld on appeal and we are asking now at this point that this committee not get involved in this issue anymore. The papers before the courts is a stack at least this high (indicating).

The courts have taken a very close look at it and agreed with us that this is an essential public health regulation, and this committee felt that it shouldn't go into effect until the Court of Appeals has taken a look at it. That is happening at the time, and we expect a final decision by August. We hope that this is the end of the matter, that this committee will let the judicial process work.

I would add that the public greatly favors ingredient labeling. A Gallup Poll taken in 1983 shows that 61 percent of Americans favor regulation requiring alcoholic beverage ingredient labeling, and I think the public is becoming aware of the issue. It has been covered on "Good Morning, America," The Wall Street Journal, many stories about it, and the L.A. Times in fact discussing the subcommittee's role in the matter editorialized last December when the continuing resolution was before the House saying that Congress again should allow this regulation to take effect if the court so ordered it, and that is what we are hoping happens.

[The statement of Mr. Silverglade follows:]

TESTIMONY

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms Appropriations

* * *

Committee on Appropriations

Subcommittee on Treasury, Postal Service and General Government

United States House of Representatives

April 15, 1986

Bruce A. Silverglade
Director of Legal Affairs
Center for Science in the Public Interest

Good afternoon. My name is Bruce Silverglade. I am Director of Legal Affairs at the Center for Science in the Public Interest (CSPI). With me today is Mitchell Zeller, an attorney in our Office of Legal Affairs.

The Center is a non-profit consumer health organization and has had a longstanding interest in improving national health policies. CSPI is supported by individual donations of our approximately 70,000 members.

Since 1972, we have worked to improve regulation of alcoholic beverage labeling. Today, I would like to address two matters of great concern to us: ingredient labeling and calorie labeling of alcoholic beverages.

Alcoholic Beverage Ingredient Labeling

Ingredient labeling is an essential public health measure. The Treasury Department itself estimated that at least one and one-half million Americans are allergic to the more than 250 different ingredients that can be used in alcoholic beverages. See Attachments 1 and 2. These persons unknowingly play Russian roulette every time they have a beer, cocktail, or a glass of wine. Adverse reactions to alcoholic beverages range from runny nose to gasping, wheezing, and choking. Tragically, the record will show that in some cases, inadvertent consumption of brands containing certain ingredients can be fatal. Just last July, a Texas man died after drinking a few sips of wine preserved with sulfiting agents. See Attachment 3. Had the use of this preservative been disclosed on the label, this person would likely still be alive today. As the Food and Drug Administration specifically stated in a memorandum to ATF, "reliance on ingredient declarations may be the only practicable means for [such] consumers to avoid the offending substances." See Attachment 4.

Not surprisingly, ingredient labeling of alcoholic beverages has widespread public support. In a Gallup poll conducted for the National Council on Alcoholism in 1983, 61 percent of Americans stated they favor a federal regulation requiring ingredient disclosure of alcoholic beverages. See Attachment 5. We further note that the Consumer Federation of America, which represents hundreds of consumer organizations, has endorsed ingredient labeling in its 1986 policy resolution statement.

This subcommittee has taken substantial interest in BATF's regulation of ingredient labeling. As you know, Mr. Chairman, BATF issued final regulations requiring ingredient disclosure in 1980 but rescinded the regulations in 1981. That action was reversed by the United States federal district court here in Washington in 1983. The court ordered that the regulation be reinstated no later than February 8, 1984. BATF initially complied, but then rescinded the rule once again in October, 1983. That action was challenged and the federal district court once more reversed BATF.

In its most recent ruling, the district court stated that

BATF exhibited a "predetermined mindset" to rescind the regulation and ignored the most probative evidence on the administrative record before the agency, including published medical reports, cost-benefit studies and other crucial material. The district court further noted that a large percentage of the agency's statement of basis and purpose for rescinding the rule the second time was copied verbatim from briefs submitted by the administration and the Wine Institute (an intervenor) in the intial litigation. The district court had already rejected the arguments in these briefs more than two years before, and was not happy to learn that BATF had attempted to put this entire issue on a legal merry-go-round. This committee should be similarly displeased with BATF's behavior. Such attempts at legal maneuvering are not befitting to the Justice Department and threaten to undermine the entire administrative process. See Attachment 6.

Upon reversing BATF's latest attempt to rescind the ingredient labeling regulations, the district court ordered that the regulation be reinstated by April 30, 1986. Had the district court's order been allowed to take effect, we would begin seeing ingredient information on beer, wine and liquor labels in less than two weeks. Members of the public would no longer be in danger of dying, or falling into a coma by accidently drinking an alcoholic beverage which contained a substance to which they were allergic. The court of appeals, however, felt compelled to stay the district court's order pending the administration's and the liquor industry's second attempt to appeal this case. The court of appeals took this action because this committee denied BATF funds to implement the ingredient labeling regulation until the district court's order is upheld on appeal.

While we have disagreed with this committee's action, we now note that a court of appeals decision is expected shortly. Should the district court order be upheld on appeal, as we fully expect it will, the language in the current bill will allow BATF to comply with the court's decision and the public will soon know whether their glass of wine, beer, or liquor contains an additive they must avoid in order to protect their health.

With all due respect, we must state that the time has come for this committee to stop meddling in this matter and let the judicial process work. The industry's desire to hide the ingredients it uses from public scrutiny has been widely reported on national television, See Attachment 7, and this committee's attempts to deprive the public of ingredient information is increasingly becoming the subject of editorial comment. See Attachment 8. Consumers are not going to stand for being kept in the dark much longer. As the Los Angeles Times stated the last time the House acted on Treasury appropriations, Congress will soon vote "on a measure that could prolong [an] unhealthy ingorance... Alcoholic beverage ingredients can cause adverse health effects in sensitive individuals. The House should buy this round for them."

Alcoholic Beverage Calorie Labeling

Alcoholic beverages -- beer, wine and distilled spirits -- contain significant levels of calories and can contribute to obesity, a problem of concern to millions of consumers. The range of calorie content in different brands of alcoholic beverages is great. Beer contains 70-170 calories per 12 ounces, a glass of wine between 60-135 calories, and a jigger of liquor 95-125 calories. See Attachment 9. Yet, calorie-conscious consumers find it difficult, if not impossible, to determine the calorie content of alcoholic beverages because current regulations do not require that calorie information be listed on all container labels. At this time, BATF regulations require only manufacturers of "light" (low-calorie) beverages to list calorie information on labels.

Furthermore, the variation in calorie content of so-called "light" alcoholic beverages is great. Hence, the term "light" confuses and misleads consumers. For example, light beers contain between sixty-eight and one hundred and thirty-four calories. Id. At least one light beer appears to provide more calories than a competitor's regular brand. The inability to compare the calorie content of "light" and regular beer products renders informed purchasing decisions virtually impossible.

Millions of Americans are extraordinarily concerned about obesity. According to one newspaper account, the public spends $10 billion annually on diet books, pills and other aids. Health and Nutrition Examination Survey (HANES), National Center on

Health Statistics, August 30, 1979. That figure is undoubtedly much higher today. Such statistics indicate that consumers are hungry for information that may assist them in the battle of the bulge. Calorie labeling will be an obvious benefit to weight-conscious people, and will help reduce the incidence of obesity in America today.

In a 1979 FDA study of citizen comments on food labeling, sixty-two percent of the majority of the commenters who used nutritional information labeling chose calorie content as the most important piece of information that could be provided. 44 Fed. Reg. 75,995 (December 21, 1979). In addition, an FDA-sponsored Consumer Food Labeling Survey, conducted in 1978, concluded that consumers ranked the provision of calorie content information as the highest priority food label revision that they desired. Id.

Consumers are willing to incur higher prices for products containing nutritional information. The Food and Drug Administration undertook a survey of consumers' nutrition knowledge in 1975. One measure of shoppers' attitudes towards nutrition labeling was obtained by asking them if they would be willing to pay extra (up to fifty cents each week) so that this information could be put on food products. Two-thirds of those surveyed were willing to pay at least ten cents more each week for nutritional labeling. In spite of this very high demand for calorie information, the vast majority of alcoholic beverages do not contain this vital information.

In 1983, my organization filed a petition with BATF requesting mandatory calorie labeling of alcoholic beverages. See Attachment 10. In that petition we suggested that a limit be placed on the calorie content of "light" alcoholic beverages to prevent products that contain up to 134 calories in a 12-ounce serving from bearing a "light" claim.

We recommended that "light" beers contain no more than 100 calories per serving. The Miller Brewing Company also urged BATF to adopt the 100-calorie limit. See Attachments 11 and 12. Miller made this recommendation in comments submitted to BATF in 1979 and 1981.

We note that in BATF's semi-annual Regulatory Agenda announcement last April, the agency expected to publish a request for public comment on our petition in September, 1985. 50 Fed. Reg. 17,628 (April 28, 1985). In its October, 1985 Regulatory Agenda, BATF retreated from its earlier position. While it still intended to seek comments, the action timetable in the announcement stated "Next Action Undetermined." 50 Fed. Reg. 44498 (October 29, 1985). We understand that the Office of Management and Budget has prevented the agency from taking the minimal step of soliciting public comment on the need for calorie labeling.

Congress has previously opposed OMB interference in BATF's label approval processes and the agency's general labeling responsibilities under the Federal Alcohol Administration Act. Last year, Congress agreed to an amendment in the continuing resolution for the government's Fiscal Year 1986 appropriations that prevents OMB from revising or curtailing BATF's power to issue certificates of label approval. H.J. Res. 450; see H. Rep. 99-450, Amendment No. 130, p. 378, 99th Cong., 1st Sess. (1985). We urge this committee to vigorously oppose any similar efforts by OMB to prevent BATF from exercising its power under Section 205 of the Federal Alcohol Administration Act by seeking public comment on the need for mandatory calorie labeling of alcoholic beverages.

We would like to thank the committee for this opportunity and we would be glad to answer any questions concerning our testimony.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 4, 5, and 7

[T.D. ATF–66; Ref: Notice No. 314]

Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF).

ACTION: Final rule; Treasury decision.

SUMMARY: This rule amends 27 CFR Part 4, Part 5, and Part 7 (Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages under 27 U.S.C. 205 (e) and (f)). This rule requires ingredient disclosure on labels of wine, distilled spirits, and malt beverages. These regulations, however, provide an exception to this requirement. Under this exception the ingredient list will not be required to appear on the label when the producer, bottler, or importer: (1) elects to make an ingredient list available upon request; (2) places a statement on the front label or a separate strip label notifying the consumer of the availability of an ingredient list and provides the name and, somewhere on the label, a full mailing address in the United States where such an ingredient list can be obtained upon request; and (3) does not place a statement on the label which could be misconstrued to be an ingredient list. This exception gives industry maximum flexibility to provide ingredient information at minimum cost. At the same time, it provides consumers who have the need or desire to avoid various ingredients a means to do so, thus meeting the objective of the regulatory proposal. Because of special health problems, this rule also mandates the disclosure on the label, in all instances, of the presence of FD&C Yellow No. 5 whenever it is used in a product.

DATE: October 14, 1980.

FOR FURTHER INFORMATION CONTACT: Norman Blake or Roger Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

I. Background

The Department published in the Federal Register on February 2, 1979 (44 FR 6740), a notice of proposed rulemaking entitled "Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages for Partial Ingredient Labeling" (Notice No. 314). The proposed requirements were intended to assist consumers in identification of ingredients used in wine, distilled spirits, and malt beverages, particularly those consumers who are concerned about possible allergic reactions to certain ingredients. The proposal was developed after one consumer group pointed out that most foods and beverages were required to have all ingredients disclosed on the label and that there were health and consumer reasons to have the same requirements apply to alcoholic beverages.

The 1979 proposed regulations conformed in many instances with food labeling regulations of the Food and Drug Administration and proposals made earlier (Notice No. 271 (40 FR 6349), February 11, 1975; Notice No. 272 (40 FR 6354), February 11, 1975; and Notice No. 149 (39 FR 27812), August 1, 1974) by the Department. Notice No. 314 proposed that all ingredients, except "incidental additives," used in the production of alcoholic beverages be listed on the label of the alcoholic beverage. However, Notice No. 314 proposed important modifications from earlier notices in order to minimize cost burdens on industry. The important modifications were: no order of predominance was required; the list could appear on the front, back, or strip label; under certain conditions ingredients added to adjust natural deficiencies (e.g. sugar in grapes) of essential components need not be listed; producers were allowed to take advantage of seasonal price fluctuations in essential components by listing a range of possible components instead of being required to change the label each time the essential component was changed (shot-gun labeling); the amount of sodium need not be disclosed in parts per million; and the proposal allowed a three-year transition period after final rules were published. Notice No. 314 also required an authorized official of the foreign country of origin to certify that the list of ingredients on imported alcoholic beverages is accurate. Because of requests for extensions, the initial 60-day comment period was extended by 120 days and finally expired on August 3, 1979.

Notice No. 314 raised two basic issues which were addressed by persons providing comments, and by the Treasury in analyzing and acting on the proposal. The first issue was whether alcoholic beverage producers should be required to disclose ingredients used in their products. Is there a need for ingredient disclosure, and is it cost efficient to require this information on every label? The second issue concerned the details of disclosure. For example, should ingredients be listed in the order of predominance, should shot-gun labeling be permitted, and should there be incidental additives/adjuncts which need not be listed?

II. Comments

During the comment period, the Department received 1,873 comments from consumers, special interest groups, industry members, doctors, government agencies and members of Congress. Approximately 75 percent of the comments opposed mandatory ingredient labeling for alcoholic beverages.

Comments in favor: Reasons given favoring the proposal generally indicated that the consumer has a "right to know" what he/she is consuming. Approximately 20 percent of the comments in favor of the proposal gave medical reasons—i.e., an individual who is allergic to ingredients used in alcoholic beverages could avoid those ingredients and thus avoid medical problems. Some also wrote in favor under the belief that a warning label was being proposed and that for religious and personal reasons they were opposed to any type of alcoholic beverages. Members of the malt beverage industry, while suggesting some modifications, generally supported the proposal.

Comments in opposition: Approximately 60 percent of those who opposed said the requirement was too expensive and inflationary; approximately 40 percent said it was unwanted and unjustified; approximately 10 percent said the industry is already too regulated; approximately 20 percent of those opposing the regulations gave personal reasons not related to the proposal (percentages exceed 100 percent since many comments involved more than one area of opposition). Members of the wine and distilled spirits industries were almost unanimous in their opposition to the proposal.

Many industry members, while objecting to the proposal, stated that they either do or would be willing to respond to any inquiries regarding product quality and the ingredients used in their products. One wine industry member commented, "We respond in detail, as I presume most wineries do, to those occasional consumer requests for specific facts. We would certainly pledge our full cooperation toward a mandated program of that nature."

Attachment 1

III. Regulatory Analysis

Executive Order 12044 requires that a Regulatory Analysis be prepared on all regulations whose processing began after May 22. 1978. which have a major economic impact on the general economy. and are determined to be a significant regulatory project. Because of the controversy which has accompanied the concept of labeling ingredients on alcoholic beverages. the Treasury Department decided to conduct a Regulatory Analysis even though it was not required to do so by Executive Order 12044.

As a first step in the Regulatory Analysis. the Department prepared an outline of the analysis which included nine possible alternative ways of dealing with the problems. These alternatives were:

(1) No regulatory action: (2) Public educational programs—joint Department-industry effort where the Government would print pamphlets of general information and instruct interested persons to write producers. bottlers. or importers for specific product information: (3) Ingredient labeling. functional (additives/adjuncts). example: artificially colored. artificially flavored. preservatives added: (4) Ingredient labeling. additives/adjuncts only. no incidental additives/adjuncts: (5) Ingredient labeling. shot-gun listing of essential components and listing additives/adjuncts. but not incidental additives/adjuncts (as proposed in Notice No. 314): (6) Ingredient labeling. shot-gun listing of essential components and a listing of all additives/adjuncts: (7) Ingredient labeling. listing the essential components and additives/adjuncts. excluding additives found naturally in the essential components: (8) Ingredient labeling. listing the essential components and additives/adjuncts: and (9) Ingredient labeling. listing essential components and additives/adjuncts by order of predominance.

A copy of the full outline for the Regulatory Analysis is available for review at ATF Public Reading Room. Room 4408. 1200 Pennsylvania Avenue. NW., Washington. DC 20226.

ORC Consumer Poll

As a second step in the Regulatory Analysis. the Department decided to utilize an independent means to assist us in assessing whether consumers wanted ingredient labeling and wanted it enough to be willing to pay for the information. The Department selected a private specialized firm. the Opinion Research Corporation (ORC) of Princeton. New Jersey. to conduct a public opinion poll. The ORC survey was a telephone interview among a sample of 2.027 adults. The sample group was reflective of the demographic characteristics (sex. race. age. geographical region. income. and education) in the U.S. population.

The key findings of the survey as reported by ORC are:

1. About 6 drinkers in 10 (61%) believe listing ingredients on alcoholic beverage labels is at least somewhat necessary. Women are more likely to consider an ingredient listing necessary than men.

2. On the average. about one-third of the drinking public say they are unwilling to pay for ingredient labeling for alcoholic beverages and one-third had no opinion. Of the one-third of the drinkers who said they were willing to pay. more were willing to pay for ingredient labeling on a fifth of liquor (an average of 13.2 cents) than for labeling on a bottle of wine (12.5 cents) or a six-pack of beer (9.4 cents).

3. Almost 4 drinkers in 10 (39%) believe the Government's requirement of safe ingredients is sufficient. Thirty-six percent would also like ingredient labeling. 12 percent said they would like some other informational program: and 13 percent were not sure or did not know.

4. A majority of the drinking public (52%) say they usually or always use ingredient lists on packaged food products to compare different brands of the same product. Women (66%) are more likely to claim usage of such ingredient listings than are men (40%).

5. A majority of the drinkers (52%) say they probably or definitely would use ingredient lists on alcoholic beverage products. Again. women (59%) claim they would be more likely to use the lists than men (46%).

BDM Cost/Benefit Study

As the third step in the Regulatory Analysis the Department undertook a cost/benefit study. In order to have an independent assessment of the potential economic consequences of implementing partial ingredient labeling and the specific benefits that might accrue to society. the Department commissioned the BDM Corporation. McLean. Virginia. to study the costs and benefits for all the nine alternative approaches. The Department instructed BDM to analyze on the benefit side both the health costs and the consumer's desire to know and willingness to pay for the knowledge: and on the cost side to analyze what it would cost industry to implement the various options. specifying those costs to be passed on to consumers and the distribution of costs by size of producer.

The Department's conclusions as to the reasonableness of the cost and benefit estimates are given in the next section. The major findings of the BDM study are described below:

1. There are important unanswered questions for both costs and benefits which according to BDM can "lead to widely different conclusions on the desirability of ingredient labeling."

2. Estimates of expected costs of mandated ingredient labeling to industry and the Government based on the information submitted. range between a low of $12 million per year to almost $150 million per year. The major factors that contribute to this range of estimates are the use of a back label. advertisement costs. and mark-ups that might be applied by the industry at different points in the distribution channel. The "advertisement costs" were submitted directly to BDM by one winery after the comment period and from this one submission BDM estimated a total annual $25 million advertising cost for the entire wine industry.

3. Start-up costs amount to approximately $18 million for the entire industry if no additional back labels are used: if additional back labels are used by all producers not presently using back labels. the "total potential investment cost for the three industries. as reported by the industries. are in excess of $35 million."

4. BDM found "strong evidence" in the medical research literature that indicated "ingredients used in alcoholic beverages can cause adverse health effects in humans." BDM found that while most of the effects are not necessarily severe. some are severe. The study also reports that adverse effects are "not limited to allergic reactions." It is impossible. however. to determine exactly either how many people are affected (the range BDM gave is anywhere from 475.000 to 1.700.000) or how much money in health costs could be saved if ingredients were listed. (A wide range of estimates ranging from approximately one-half million dollars to four hundred million dollars was considered possible. depending on which assumptions were considered the most appropriate.)

5. The data on the extent to which consumers want ingredient labeling information are contradictory. BDM believed the comments received by the Department underestimated true consumer support and the opinion poll "probably overestimates true support." In an attempt to quantify consumer benefits. BDM suggested using data from the consumer poll in which one assumes that approximately one-third to one-half

of the consumers would be willing to pay between $0.50 and $2.00 per year. Using this approach BDM says the consumer benefits range between $31 million and $188 million per year.

6. Because of the "uncertainty" in the data. BDM suggests that policymakers estimate the reasonable ranges for each of the key cost and benefit factors as a means of calculating the cost/benefit ratio. The final chapter in the BDM study outlines the methodology for completing such an analysis.

Conclusions

The Department reached several conclusions from an analysis of the comments received in response to Notice No. 314, data in the ORC Consumer Poll, the BDM study, and discussions with other federal agencies:

1. The costs to the industry of mandated ingredient labeling would not be excessive, especially if compared to the industry's $40 billion dollar annual retail sales. The realistic range of annual costs goes from $12 million to $49 million depending upon whether one includes the cost of adding additional back labels. Many of the producers have indicated that they would implement the regulation by use of a back label. It is questionable whether this should be considered a "cost" of ingredient labeling because it is normally more feasible and less costly to include the required information on the front label. An apparent reason for not doing so may reflect a marketing decision to make the list less prominent. However, we recognize that if producers decide to add a back label the cost of the back label will ultimately be passed on to the consumer in the form of a price increase.

The cost to consumers, however, includes more than just the increased cost to producers in implementing ingredient labeling. The BDM study pointed out that at each level of the distribution system it is likely that sellers will mark-up the increased cost resulting from labeling, rather than merely passing it on. BDM also points out that mark-ups could be considered one of the "benefits" for industry members since mark-ups generate additional revenue. Even though legitimate questions exist as to the appropriateness of industry marking-up the cost of ingredient labeling, rather than merely passing the cost on to consumers, we believe that the decision should reflect the likelihood that mark-up will be a cost to consumers.

Claims made by parts of the wine industry during preparation of the BDM analysis that substantial advertising costs ($25 million annual) should be included as a cost of the regulation have been discounted. The wine industry's annual advertising expenditures are now approximately $100 million, and we did not find any convincing arguments that ingredient labeling would necessitate a 25 percent increase in industry advertising expenditures.

Based upon the above, the most reasonable estimate of costs (in millions) supplied by BDM are as follows:

With Back Label: With mark-up, $87 M; without mark-up, $49 M.

Without Back Label: With mark-up, $21 M; without mark-up, $12 M.

The relevant per unit costs range from .057 cents to .81 cents for a 750 ml bottle of distilled spirits; from .09 cents to .3 cents for a six-pack of 12 oz. cans of beer; and from .2 cents to 2 cents for a 750 ml bottle of wine.

2. Start-up costs are not substantial when compared to annual retail sales.

3. There is evidence that ingredients used in alcoholic beverages can have adverse effects for humans including, but not limited to, allergic reactions. It is impossible, however, to determine exactly either how many people are affected (the range BDM gave is anywhere from 475,000 to 1,700,000) or how much money in health costs could be saved if ingredients were listed. The Department believes the most reasonable estimates ranged from $12.5 million to $50 million a year. However, the Department is aware that BDM based its estimates, not on a completed analysis of potential health problems of the actual ingredients used in alcoholic beverages, but on an estimate derived from using The Task Force on Allergies' estimate of the number of people in the United States that are allergic (35 million), and a series of assumptions (the population and the ingredients in alcoholic beverages), which reduce this number of those who are likely to be allegic to ingredients in alcoholic beverages. While the precise level of harm to consumers cannot be established, the Department believes that consumers who are allergic to certain ingredients generally should be able to find out, whether from the label or some other source, if those ingredients are used in alcoholic beverages so that they can avoid the possibility of adverse reactions if they so choose.

4. There are ambiguous data on the extent to which consumers want ingredient information disclosed on a label. The consumer poll reveals most people want the labeling and say they would use it to determine which brands to purchase; but only one-third say they want to pay for it (one-third say they are not willing to pay and the other one-third did not know). While BDM suggested one could conclude from the ORC Consumer Poll that because some consumers were willing to pay something for ingredient labeling that the range for consumer benefit values should range from $31 million to $188 million. However, we also recognized that an equal number of the persons polled said they were unwilling to pay any additional money, thus raising doubts as to the validity of relying on this data.

5. Claims were made during the comment period that the proposed regulations would act as a non-tariff trade barrier. However, the Department considers that the regulations respond to a health issue and has taken steps to assure that any requirements are equally applicable to both domestic industry and foreign imports. Therefore, the department is proceeding in compliance with its international obligations.

IV. Treasury Decision

The Department is convinced that the disclosure of ingredients used in the production of alcoholic beverages is of real value. This disclosure will provide consumers with adequate information about the identity and quality of the product which will enable a consumer to make an informed choice in the purchasing of alcoholic beverages. However, the department also recognizes the uncertainties existing in the data underlying the health and consumer benefits. It has also considered the general policy of fully minimizing costs to industry and consumers in meeting regulatory objectives. Taking all these factors into consideration, this Treasury decision, while making various changes in response to the comments, adopts the ingredient labeling requirements substantially as proposed in 1979. However, to minimize the costs while still meeting basic policy objectives, producers, bottlers, or importers who elect to make ingredient lists available upon request, notify consumers of this availability, and who avoid implied label statements about ingredients, will not be required to list ingredients on the label. The new rules provide:

Basic Rule: All labels of alcoholic beverages must contain a list of ingredients in the manner specified in these regulations.

Exception: An ingredient list is not required on the label when the bottler or importer elects to furnish the ingredient information directly to the consumer upon request, and a statement in the following language conspicuously appears on the front of the brand label. or on a strip label on the front of the bottle or container: "For Information About The Ingredients In This Produc: (wine. distilled spirits or malt beverages may be inserted for "product"). Write: *(insert name of addressee and mailing address in the United States with zip code where information is available. unless this address appears elsewhere on the bottle or container).*"

Requests for ingredient information should be responded to in a timely manner. Responses to a consumer request within 30 days would be considered timely.

In order to fall within this exception. no statements (other than mandatory information) may be made on the label which would appear to be a statement of ingredients. For example. if a beer label contains a statement such as "this beer is made from grains. hops and yeast." then the full ingredient list must be stated on the label. This limitation is intended to eliminate the possibility that such partial lists might be interpreted as a complete list of ingredients.

This exception can also be claimed only when the list of ingredients furnished by the bottler or importer contains the same information as would be required to appear on the label under the basic rules. The mailed list may. however. include all the possible additives used in the production of that product because producers may be unable to easily associate each request for information to a particular batch of the product. A shot-gun listing of additives is not allowed on the list of ingredients on the label.

By providing this exception from listing ingredients on the label. consumers will be able to "vote" with their purchasing dollar as to how much information they want on a label. and industry members will have the maximum flexibility to provide ingredient information at minimum cost. At the same time people who have the need or desire to avoid various ingredients will have the capability to do so. thus meeting the objective of this regulatory proposal. The department will carefully monitor the success of this approach after it is implemented to see what changes if any. are required.

V. FD&C Yellow No. 5

The Food and Drug Administration (FDA) published a final rule entitled "FD&C Yellow No. 5: Labeling in Food and Drugs for Human Use". (44 FR 37212. June 26. 1979) which established mandatory label disclosure of FD&C Yellow No. 5 (to be listed as such) when used in products for human use. FDA proposed the effective date of July 1. 1981. for such mandatory disclosure.

One consumer group thought that all artificial colorings should be identified by their "FD&C" name. such as FD&C Yellow No. 5. The BDM study also discussed health problems associated with FD&C Yellow No. 5.

Since FD&C Yellow No. 5 is used as a coloring material in alcoholic beverages. the Department has decided that such mandatory label disclosure is also required.

This disclosure is required on the label of all alcoholic beverage products in which the coloring material is used. either in the ingredient list. or when there is no list. elsewhere on the label. It must be stated as. "contains FD&C Yellow No. 5." or substantially in a similar form. Other statements. such as "artificially colored." and "certified color added" are not acceptable for declaring the presence of FD&C Yellow No. 5. It must also be stated in the ingredient lists voluntarily furnished by bottlers and importers.

The Department believes this requirement is necessary in light of the ever-increasing medical evidence of allergic type reactions to FD&C Yellow No. 5. This medical evidence was commented upon during the comment period and was also brought out in the Regulatory Analysis conducted by BDM Corporation as a health issue. However. FD&C Yellow No. 5 will remain on FDA's Generally Recognized As Safe (GRAS) list. At present. the requirement to state this coloring material by name applies only to FD&C Yellow No. 5. Additional disclosure of any specific ingredient will be required where FDA requires such disclosure unless the Department determines that this is not warranted for alcoholic beverages.

Although FDA established July 1. 1981. as the mandatory compliance date in their final rule. the Department has extended its mandatory compliance date for the alcoholic beverage industry until January 1. 1983. to allow an approximately equivalent time for alcoholic beverages that FDA afforded to other products and to be commensurate with other mandatory labeling changes effective the same date. and in recognition of the fact that this substance has not been removed from the GRAS list.

VI. Yeast

Notice No. 314 requested comment as to whether yeast should be considered as an essential component or an additive. For the purpose of writing Notice No. 314 yeast was considered as an additive until the question was resolved.

One wine industry member's comment stated that yeast should be considered neither as an essential component nor an additive since wild yeast is found naturally on grapes. The member further stated that most producers treat this wild yeast with sulfur dioxide. destroying it. and then add a pure strain of similar yeast for the fermentation process.

One beer industry member's comment stated that yeast is essential to fermentation but is completely removed after the fermentation process and. therefore. listing yeast is inaccurate.

One liquor industry member's comment stated it would be misleading to the consumer to require labeling of yeast as an ingredient when this item is not present in the final product. It is most appropriately viewed as a processing aid or incidental additive.

Historically. the general Government regulation policy regarding labeling of foods and beverages has been that yeast is unique to the process of production and should be listed on a label whenever used.

As stated in Notice No. 314. a key factor in ascertaining whether a substance is an essential ingredient is a determination of whether the substance is fundamental to the production of alcoholic beverages. The Department concludes that yeast is a fundamental ingredient and is an integral part of the production process of wine. distilled spirits. and beer. Therefore. the yeast added is essential to fermentation and should be considered as an essential component in the production of alcoholic beverages. Also. no arguments on this issue were presented which would justify treating the labeling of alcoholic beverages any differently than food products.

VII. Water

Notice No. 314 proposed the requirement to list water as an essential component due to its unique property of being fundamental to the production of alcoholic beverages. Some comments received opposed defining water as an essential component.

One wine industry member's comment stated that in actual practice in California. water is used for the rinsing of machinery during crushing. The commenter concluded that water is not fundamental to the production of wine. and therefore. water should be considered an incidental additive.

One beer industry member's comment stated that water is essential to the brewing process but the term "brewed" connotes the use of water and obviates the need for a redundant statement of its use. It was further stated that to suggest water is an ingredient could be misleading and may imply dilution of the product.

The Department recognizes that water holds a unique position in the production of any alcoholic beverage and concludes that water used in the normal production of alcoholic beverages to facilitate brewing, distilling, or fermenting is essential to the finished product. However, water need not be listed if it is used in insignificant amounts such as for rinsing or washing machinery (crushers, etc.) or facilitating processing aids.

VIII. Incidental Additives/Adjuncts

Notice No. 314 raised the issue of whether there should be a universal standard for determining when an additive/adjunct is too small in amount to be significant, and thus considered incidental.

One industry member's comment stated that "rules of reason" should be used and no arbitrary standards should be established. Various industry comments identified or attempted to justify why a particular additive should not be required to be labeled. however, no comments offered a method to establish universal cut-off standards.

The Department concludes that a list of arbitrary cut-off points is not in the best interest of either consumers or industry. The establishment of cut-off points could be interpreted as the Department's endorsement of a "safe" level remaining in the finished product.

Food and beverage regulations have long recognized that there are ingredients used in insignificant amounts which should be exempt from labeling requirements. They are considered as incidental. The basis for determining whether an ingredient is subject to or exempt from labeling is generally in line with "rules of reason," or the intended function of the ingredient rather than a cut-off point for measuring the presence of residual material.

Under these final regulations three areas are provided under which an ingredient can be considered as incidental.

1. Processing aids that are added to an alcoholic beverage for mechanical effect only and subsequently removed or reduced to a level too small to be significant may be considered incidental. This would include, but not be limited to inert filter aids, most clarifying agents, and fining agents.

2. Processing aids which are added to react chemically or biologically within the product only to remove other substances (as by forming an insoluble compound), and where both the original substances and all the reaction properties are removed or reduced to a level too small to be significant, and have no further technical or functional effect on the finished product, may also be considered incidental.

3. Finally, a processing aid which is added to adjust the natural deficiencies of a constituent part of an essential component may be considered as incidental if the amount added is limited so that the total does not exceed the total quantity normally found in the constituent of that essential component. For example, if a producer adds a sugar or acid of the same type as is normally found in the grape type so that the total amount of the sugar or acid is no greater than that normally found in the grape type it need not be listed. However, if a producer adds a different type of sugar or acid whose make-up is different than that which is normally found in the grape type, the sugar or acid must be listed. If at any time the producer adds a quantity of sugar or acid which is greater than that found normally in the grape type it must be listed.

The provision for adjusting natural deficiencies was slightly modified by deleting "before or during fermentation" to allow flexibility in production. The Department agrees with the wine industry member's comment that this distinction is artificial since acids added after fermentation must be listed, but the same acid added before or during fermentation would not.

The Department, in its Notice No. 314 also proposed that, "a processing aid used in an intermediate product, if it has no technical or functional effect on the finished product (such as sulfur dioxide used to preserve apple juice, which, when the apple juice is added to finish the wine, the sulfur dioxide is not present in the finished wine in sufficient quantity to preserve it)," would be considered as incidental. The Department has reconsidered its position, in an effort to provide consistency in our regulations and meaningful information to the consumer, and will require the disclosure of additives/adjuncts used in intermediate products as would be required under these regulations as an additive/adjunct.

IX. Certification of Imported Products

Notice No. 314 proposed that an official of the exporting country and an official of each foreign country where processing would occur certify to the accuracy of the ingredient lists of the imported alcoholic beverages, as a way of assuring consumers would receive reliable ingredient information on those imported products. The Department formulated this procedure in a manner intended to establish equal responsibilities for domestic and foreign producers in providing consumers reliable information. The Department in the 1979 notice requested specific comments to assist in identifying and evaluating alternative procedures that would improve on the procedure proposed.

Numerous comments were submitted on the certification subject, but none presented suggestions for alternate procedures. The only argument advanced was that the proposed procedure was impractical for foreign producers because it was too harsh (the claim of importers) and unfair for domestic producers because it was too lenient (the claim of the domestic industry).

In the absence of any suggestion for a viable alternative that would insure equal treatment to domestic and foreign producers, the Department is implementing the certification procedures generally as proposed, except, the Department deleted the provisions for a certified list of ingredients from each foreign country where blending or treating occurred. The responsibility for certifying a complete list of ingredients will rest with an authorized government official of the foreign country in which the alcoholic beverage is bottled or packed prior to entry into U.S. Customs custody, thereby reducing the burden of certification on all but the country in which the product is bottled or packed. In addition, a U.S. bottler or producer who subsequently bottles, processes, or packages any imported beverage must provide a certified list of the ingredients in the imported product as part of any application for a certificate of label approval. The authorized government official of the foreign country in which the alcoholic beverage was produced or where additional processing last occurred prior to entry into U.S. Customs custody will sign this certified list of ingredients.

The Department made other modifications to the certification provisions as a result of changes to other sections of the proposal. These changes provide additional latitude that the Department considers comensurate with requirements for domestic producers. At the option of the foreign producer or domestic importer, imported alcoholic beverages must be labeled with an ingredient list or an option statement and address in the United States where consumers may obtain ingredient information. Further, if the ingredient list is not shown on the bottle or container. the option statement must be on either the brand label or on a strip label on the front of the bottle or container. The use of a strip label minimizes the number of labels required by a foreign producer who makes worldwide distribution. thereby saving considerable expense.

In addition. Notice No. 314 proposed that a certified ingredient list accompany applications for certificates of label approval covering malt beverages produced from imported nonalcoholic wort or wort concentrate. The Department is withdrawing this proposal.

X. Order of Predominance

Notice No. 314 proposed that ingredients were not required to be listed in order of predominance. Comments received from consumers and consumer groups objected to this exemption on the basis that it denied the consumer "an approximate idea as to the relative amounts of ingredients" in the product and may be misleading. These same comments stated that if the order of predominance is not shown. this fact should be so stated. The Department concurs with the latter comment that if the ingredients are not listed in order of predominance. a statement "Not Necessarily In Order of Predominance" shall accompany the listing of ingredients. This additional requirement has been included in the final regulations.

XI. Type Style and Size

Notice No. 314 discussed type size. placement of an ingredient list on the label. authorized or required functional statements for additives. and the style of script or print. With the exception of the style of script or print. the other areas have been slightly modified. The notice proposed an effective date of January 1. 1980. for conversion to metric type sizes in Part 5 (Distilled Spirits) and Part 7 (Malt Beverages). However. the Department has extended the mandatory compliance date until January 1. 1983. to be commensurate with other mandatory labeling changes effective the same date.

In addition to conversion from gothic to metric type sizes. Notice No. 314 proposed the ingredient list be in type or printing not smaller than 2 millimeters except the proposal allowed 1 millimeter on certain small container sizes. The Department has reviewed its position and has concluded that the 2 millimeter type size requirement for larger containers and 1 millimeter type size requirement for small containers would dominate an abnormally large area of label space. This would likely contribute to forcing some producers to use a back label for disclosure of ingredients. thus increasing the cost to producers and ultimately. consumers. Therefore. the type or printing for ingredient lists shall not be smaller than 1 millimeter. except the type or printing on certain small bottles shall not be smaller than one-half millimeter.

The placement of the ingredient list on the bottle or container is expanded to include the cap of the bottle or top of the container. provided other mandatory information is not obscured.

Notice No. 314 proposed that preservatives contain a mandatory functional statement. "to preserve" or "as a preservative." This requirement for a mandatory functional statement is changed to be optional.

XII. Derivatives

Notice No. 314 proposed that derivatives be listed separately from their essential components.

One comment from the distilled spirits industry stated that spirits made from corn or a derivative (corn grits or corn meal) are identical and breaking them out separately may mislead the consumer. The same argument was also posed for labeling grapes or grape concentrate.

In the production of any alcoholic beverage. essential components. other than water. are subjected to some initial processing which changes them from their primary agricultural state. For example. corn is ground into corn grits or corn meal and grapes are crushed into grape juice before brewing or fermentation begins.

In response to industry and consumer comments the Department concludes that derivatives of essential components need not be labeled as such unless some other processing affects the composition of the essential component.

XIII. Compounded Essential Components

A comment from the brewing industry stated a 1975 survey conducted by the United States Brewers Association. Inc. demonstrated that listing corn syrup as an ingredient could be misleading to consumers. A significant number of those surveyed thought malt beverages produced from corn syrup would be sweeter than other brands.

While the Department concluded that the distinction between some essential components and their derivatives is unwarranted. that distinction does not hold for those essential components subjected to some other processing affecting their composition.

Corn syrup has long had a standard of identity that allows the addition of ingredients other than corn (preservatives and/or other additives) which distinguishes this product from other derivatives.

The Department. therefore. concludes that essential components which have been compounded by addition of other ingredients should be labeled by listing the commonly recognized or usual name such as corn syrup. or each individual ingredient in that compounded essential component. Producers will then be able to clearly inform consumers of ingredients used in a product by furnishing the well-known name of the ingredient or a truthful and accurate listing of its composition.

XIV. Miscellaneous Amendments and Considerations

If necessary. the Department will consider proposing amendments to other regulations affected by this final rule.

The Department will also give careful and expeditious consideration to all petitions pertaining to matters and changes affected by this Treasury decision.

Transition Period

Notice No. 314 proposed a 3 year transition period. However. due to the extension of the comment period (120 days). the time required to complete the Regulatory Analysis. and the fact that the wine industry is required to make label changes effectively January 1. 1983. the transition period will be slightly less than originally proposed. the Department believes this length of time for the transition period is sufficient for industry to make changes necessary to conform to the new regulations and to make certain that compliance is monitored in the simplest and least burdensome way possible.

Public Inspection and Disclosure

Copies of the final rule. of the Regulatory Analysis. and of all written comments will be available for public inspection under authority of 27 CFR 71.41(b) during normal business hours at the following location: Public Reading Room. Room 4408. Federal Building. 12th and Pennsylvania Avenue NW.. Washington. DC 20226.

If a copy of the Regulatory Analysis and the Opinion Research Corporation Survey (Poll) is desired. it can be obtained. for a fee. from: The Office of Disclosure. Bureau of Alcohol. Tobacco and Firearms. Room 5207. 12th and Pennsylvania Avenue NW.. Washington. DC 20226.

Drafting Information

The principal authors of these regulations are Norman Blake and Roger

Bowling. Research and Regulations Branch. Bureau of Alcohol. Tobacco and Firearms. However. personnel from other offices in the Treasury Department substantially participated in developing the substance and style of these regulations.

Authority

Accordingly. under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981 (as amended: 27 U.S.C. 205)). 27 CFR Parts 4. 5. and 7 are amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The table of sections in 27 CFR Part 4. Subpart D is amended to include an additional section as follows:

Subpart D—Labeling Requirements for Wine

Sec.

* * * * *

4.37a List of ingredients.

* * * * *

Par. 2. Section 4.10 is amended to add. in alphabetical order. the terms "Additive." "Artificial flavor or artificial flavoring." "Essential component." "Incidental additive." "Ingredient." and "Natural flavor or natural flavoring." The added definitions read as follows:

§ 4.10 Meaning of terms.

* * * * *

Additive. For purposes of this part. an additive is any substance. except essential components and incidental additives. added by any means during the production. storage. or treatment of wine and remains in the finished product. For example. substances added to clarify. filter. stabilize. preserve. flavor. or color wine that remain in the finished product are considered additives. Agriculturally identified substances (grapes or yeast for example) which are essential components in the production of the basic wine are not considered additives.

* * * * *

Artificial flavor or artificial flavoring. Artificial flavors or artificial flavoring materials are any flavoring materials not included in the definition of "Natural flavors" in this part.

* * * * *

Essential component. For purposes of this part. an essential component is any agriculturally identified substance (grapes. peaches. blackberries. or yeast for example). used in the production of a basic wine which is fundamental to the production of the wine. Water is specifically included as an essential component.

* * * * *

Incidental additive. (1) A processing aid that is added to a wine for its mechanical effect only (such as an inert filter aid or certain clarifying agents) and is then removed or reduced to a level too small to be significant: or (2) a processing aid which reacts chemically or biologically within the product only to remove other substances (as by forming an insoluble compound) and both the original substance and all of its reaction products are then removed. or reduced to a level too small to be significant. and have no further technical or functional affect on the finished product: or (3) a processing aid which is added to adjust the natural deficiencies of a constituent part of an essential component if the amount added is limited so the total does not exceed the total quantity normally found in the essential component. Any substance which causes. catalyzes. or otherwise participates in a chemical or biological reaction within the product. except as noted in items (2) and (3) of this paragraph. is specifically excluded from this definition of an incidental additive and is considered as an additive.

Ingredient. For purposes of this part. an ingredient is any essential component or additive. except an incidental additive. used in the production of a finished wine.

* * * * *

Natural flavor or natural flavoring. The term "natural flavor" or "natural flavoring" means the essential oils. oleoresin. essence or extractive. hydrolysate. distillate. or any product of roasting. maceration. heating or enzymolysis. which contains the flavoring constituents derived from a spice. fruit or fruit juice. vegetable or vegetable juice. edible yeast. herb. bark. bud. root. leaf or similar plant material. meat. seafood. poultry. eggs. dairy products. or fermentation products thereof. whose significant function is flavoring.

* * * * *

Par. 3. Section 4.32 is amended by changing the reference in (a)(4) from "domestic" to "American": by adding a new paragraph (c): by relettering existing paragraph (c) as (d) and making editorial changes: and by changing the reference in paragraph (a) to (c) and (d). As amended. § 4.32 (a). (a)(4). (c) and (d) read as follows:

§ 4.32 Mandatory label information.

(a) Except as otherwise provided in paragraphs (c) and (d) of this section. there shall be stated on the brand label:

* * * * *

(4) On blends consisting of foreign and American wines. if any reference to the presence of foreign wine is made. the exact percentage by volume of foreign wine.

* * * * *

(c) Beginning January 1. 1983. a list of ingredients or the option statement and address in the United States where the ingredient information is available shall appear as required by § 4.37a.

(d) The name and address of the importer (when required to be shown) or the American bottler or packer need not appear on the brand label under one of the following conditions:

(1) In the case of imported wine. it appears on any other label affixed to the container.

(2) In the case of wine domestically bottled. the name and address of the person for whom bottled or packed appears on the brand label. *and* the name and address of the bottler. or packer appears on any other label affixed to the container.

Par. 4. A new section. § 4.37a. has been added. in numerical sequence. to read as follows:

§ 4.37a. List of ingredients. (Not mandatory before January 1, 1983.)

(a) *Ingredients*—(1) *Label disclosure.* There shall be shown on the brand label. back label. on a separate strip label. or on the cap of the bottle or the top of the container a list of all ingredients used in the production or treatment of wine. If applicable. the list of ingredients must contain the statement "Not Necessarily In Order Of Predominance."

(2) *Exception.* The list of ingredients required under paragraph (a)(1) of this section need not appear on the label where the following conditions are met.

(i) The producer. bottler. packer. or importer timely provides a list of ingredients upon request. The list must comply with the requirements for label disclosures. except that the list may include all additives which are sometimes used in the product. Such additives shall be identified by words indicating that they may or may not be present such as "or." "and/or." "contains one or more of the following." Where the American producer. bottler. or packer takes this exception. a list of ingredients to be furnished to consumers shall be submitted as an attachment to the Form 1649 or Form 1649 Supplemental.

TABLE IV-3. SUMMARY OF HEALTH EFFECTS FOR INGREDIENTS REVIEWED

INGREDIENT	WHERE AND EXTENT USED			HEALTH PROBLEMS	POPULATION AT RISK	COMMENTS
	[illegible]	[illegible]	SPIRITS			
YELLOW NO. 5	V.R.	V.R.	R	HYPERSENSITIVITY/ALLERGIC* ANIMAL MORTALITY ANIMAL TOXICITY	APPROXIMATELY 100,000	FDA WILL LIKELY REQUIRE FOOD LABELING
WHEAT			M	HYPERSENSITIVITY/ALLERGIC PRODUCES LESIONS IN INTESTINE SCHIZOPHRENIA—PROMOTING		MAY BE WIDESPREAD BUT EXACT INFORMATION IS LACKING
YEAST	W	W	W	HYPERSENSITIVY ALLERGIC DENTAL PROBLEMS CIRCULATORY PROBLEMS IN ANIMALS		DIFFERENT SPECIES OF YEASTS APPEAR TO PRODUCE DIFFERENT EFFECTS
EGG WHITE	R/M			HYPERSENSITITY/ALLERGIC	APPROXIMATELY 250,000	FREQUENTLY ON LISTS OF TEN ALLERGIC OFFENDERS
SODIUM BISULPHITE	M	R		ANAPHYLAXIS IN HUMANS VARIOUS DISTURBANCES IN EXPERIMENTAL ORGANISMS		ALTHOUGH FEW RESEARCH PAPERS AVAILABLE, THERE IS POTENTIAL FOR ADVERSE HEALTH EFFECTS IN HUMANS
CASEIN	R/M			HYPERSENSITIVITY/ALLERGIC CONTRIBUTES TO NITRITE CONTENT CONTRIBUTES CALCIFICATION IN EXPERIMENTAL ANIMALS	APPROXIMATELY 250,000	CASEIN IS MADE BY A PROCESSING PROCEDURE WHICH IS SUSPECTED OF DEVELOPING ADVERSE EFFECTS IN HUMANS
POTASSIUM METASULFITE SODIUM METASULFITE	W	R		BOTH INGREDIENTS ENGENDER ADVERSE PHYSIOLOGICAL REACTIONS IN ANIMALS		FASEB SUGGESTS MONITORING ON CONSUMPTION OF INGREDIENTS
PARABENS		M		HYPERSENSITIVITY ALLERGIC		
RYE			M	HYPERSENSITIVITY ALLERGIC		
SULFUR DIOXIDE	W			HYPERSENSITIVITY/ALLERGIC		
CORN		W	W	HYPERSENSITIVITY ALLERGIES FOUND ON SEVERAL LISTS AS COMMON OFFENDERS	LIKE EGG WHITE, CASEIN	
RICE		W		HYPERSENSITIVITY ALLERGIES		
PAPAIN		R, M		HYPERSENSITIVITY ALLERGIES IN WORKERS WITH PAPAIN		PRESUMPTIVE EVIDENCE THAT IT IS ALSO BORNE BY ALCOHOLIC BEVERAGES
MALIC ACID	W	R		SHOWS PHYSIOLOGICAL DISTURBANCES IN ANIMALS		
CHERRY FLAVORING	R		M	SHOWS PHYSIOLOGICAL DISTURBANCES IN ANIMALS		
MALT		W	W	HYPERSENSITIVITY ALLERGIES IN WORKERS WITH MALT		PRESUMPTIVE EVIDENCE THAT IT IS ALSO BORNE BY ALCOHOLIC BEVERAGES
BARLEY		M	W	MINIMAL PHYSIOLOGICAL DISTURBANCES IN HUMANS		

*HYPERSENSITIVITY ALLERGIC WILL BE USED AS A SHORT IDENTIFICATION OF THE CLUSTER OF EFFECTS SUCH AS ASTHMA, URTICURIA, ANGIONUROTIC AND HEADACHES

V.R. – VERY RARELY
R – RARELY
M – MODERATELY
W – WIDELY

AEDQ/80

Attachment 2

Attachment 3

THE NEW YORK TIMES, THURSDAY, OCTOBER 31, 1985

Judge Orders Disclosure for Alcoholic Drinks

By **IRVIN MOLOTSKY**
Special to The New York Times

WASHINGTON, Oct. 30 — A Federal district judge ruled today that beer, wine and liquor bottles must carry labels listing all ingredients.

The winner in the case was the Center for Science in the Public Interest, a consumer group, which was joined by the State of New York. They had sued the Reagan Administration, which had canceled such a labeling regulation imposed by the Carter Administration.

The decision was issued this afternoon by Judge John H. Pratt. Dot Kester, a spokesman for the Bureau of Alcohol, Tobacco and Firearms, said her agency had not seen the decision and could not say immediately whether it would file an appeal.

A spokesman for the Distilled Spirits Council of the United States, which intervened on the side of the Government, also had no immediate comment.

Reason for Ending Requirement

Miss Kester said, "Our position has been that the regulation was not cost-effective and would not give the kind of information the consumer was looking for."

Bruce Silverglade, legal director of the Center for Science in the Public Interest, said most Americans would be surprised to learn of the ingredients in some beer, wine and liquor.

Fish glue, for example, is used as a clarifying agent in wine. Another clarifying agent in some wines is casein, a milk product, and Mr. Silverglade said that 250,000 Americans were allergic to it and risked reactions, not knowing that it was in the wine.

"Ingredient labeling is an essential public health measure," Mr. Silverglade said. "More than one million Americans are allergic to the clarifying agents used in beer, wine and liquor."

By far the most widely used and potentially dangerous additives, he said, are sulfites, which have been linked to several deaths.

"Anti-oxidants, preservatives, defoaming agents and artificial flavors and colors are used in beer, wine and liquor without ingredient labeling," Mr. Silverglade said. "Ingredients are listed on all other products, including dog food and shampoo. More than a million Americans are at risk and definitely need this information."

Ruling Is Explained

In his decision, Judge Pratt said previous argument had settled several issues.

One, he said, was that Federal food and drug law was intended "to give consumers information to allow them to make decisions that might affect their health." Another was that while it "costs are an important consideration," the Reagan Administration could not base its decision to cancel the regulation "primarily on costs to the industry."

Judge Pratt also wrote, "Alcoholic beverage ingredients can cause adverse health effects in sensitive individuals."

In his decision, Judge Pratt chided the Bureau of Alcohol, Tobacco and Firearms, an agency of the Treasury Department, for having "lifted" arguments from previous cases in which the bureau lost.

"We were immediately impressed with a strong feeling of déjà vu and that we had heard most of these supporting contentions before," Judge Pratt wrote. "These impressions turned out to be all too true."

That same language, he said, contributed to his conclusion that the bureau had "a predetermined mindset." Judge Pratt said the bureau had violated the law, had acted in an arbitrary and capricious manner and had abused the discretion provided it by law.

Wine Institute's Position

Joe Harikian, a spokesman for the Wine Institute, which is based in San Francisco, said his organization would have no immediate comment on today's decision, but he restated its previous position.

This included an assertion that "there has been no genuine consumer support for ingredient labeling" and that "the costs of implementing the proposals to consumers, producers and governments would be excessive and inflationary."

Don't miss Sunday's Times Magazine

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Memorandum

268

Date JUL 29 1983

From Associate Commissioner for Regulatory Affairs (HFC-1)
Food and Drug Administration

Subject Informal Comments on Notice No. 469

To Tom George
Chief, Division of Regulations and Procedures
Bureau of Alcohol, Tobacco and Firearms

It has come to our attention that the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking to reconsider its ingredient labeling regulation for wine, distilled spirits, and malt beverages. The ATF notice, which appears in the Federal Register of June 17, 1983 (48 FR 27782), includes statements that relate to Food and Drug Administration (FDA) regulations and we are offering the following informal comments on the proposal.

The first issue that is discussed in the ATF notice involves "consumer's informed choice." Included in that discussion is the following statement: "Third, unlike foods governed by statutory ingredient labeling requirements, alcoholic beverages are not consumed for nutritional purposes." While it is true that the Federal Food, Drug, and Cosmetic Act (the FD&C Act) generally requires ingredients to be disclosed on packaged foods, neither the FD&C Act nor FDA's regulations on ingredient labeling make any distinction between those foods that are consumed for their nutritional value and the many that are not.

We have also noted that while the ATF notice discusses the "consumer's right to know" issue, there is no discussion about disclosures to facilitate "value comparisons," the basis for FDA's ingredient declaration requirements for cosmetics under the Fair Packaging and Labeling Act (21 CFR 701.3). Indeed, it has been the agency's experience that while, as you point out, there is disagreement about the extent to which consumers want extensive information, most want enough information to be able to make value comparisons, even if only to favor certain ingredients or avoid others.

The second critical issue identified by ATF is the health benefits concern. Included in this discussion is a statement that only a small portion of the population is afflicted with allergies. While we do not know the extent of allergies to ingredients in alcoholic beverages, data derived from a survey of the National Consumer Panel of the Market Research Corporation of America (1977) suggests that approximately sixty-six million adults in the

Attachment 4

United States believe they have adverse reactions to foods. So far as we know, no reliable estimate is available about the number of individuals who actually suffer adverse reactions from substances in food. Once sensitivity to ingested substances has been confirmed, however, the most effective way of dealing with the problem is to avoid those substances. Because many ingredients may be concealed in prepared products, reliance on ingredient declaration may be the only practicable means for consumers to avoid offending substances.

FDA's continuing experience with the issues involving sulfiting agents clearly indicates that many consumers are especially concerned about possible allergic reactions to these ingredients. Indeed, the letters that we have received from consumers frequently request that sulfites be either prohibited or specifically identified on the products which contain them. Among the letters that FDA has received from consumers are several that specifically comment on sulfites in alcoholic beverages. We are attaching them for your consideration.

Although the reference in your notice to D&C Yellow No. 5 is included under the discussion of public participation, it is also relevant to the issue of health consequences. FDA has determined that there is enough reason for concern about possible adverse reactions to FD&C Yellow No. 5 to require its specific identification on the labels of all foods in which it is used (21 CFR 74.705)

The next key issue identified by ATF relates to costs. One means of reducing costs that FDA has found with food labeling is to allow labelers sufficient time to use up old labels before any new requirements go into effect.

The last issue addressed by ATF in the June 17, 1983, notice relates to the "address label option." On this issue we simply note that FDA has long believed that ingredient information is most useful, particularly to people who are concerned about allergic reactions, if the information is available at the time of purchase.

We appreciate this opportunity to provide these informal comments on your proposal and hope that our comments and the attachments provide useful information.

Joseph P. Hile

Joseph P. Hile

Attachments

NATIONAL ATTITUDES TOWARDS A POTENTIAL EDUCATION CAMPAIGN FOR MODERATE AND SENSIBLE DRINKING HABITS

Conducted for: New York City Affiliate, Inc.
Conducted by: The Gallup Organization, Inc.
Survey conducted: July 1982

Report date: October 1982

Attachment 5

Support for Calorie and Ingredient Labelling

About six respondents in ten (61%) said "there should be a federal regulation requiring alcoholic beverage containers to list calories and ingredients." But only one in twenty (5%) believed such a requirement would reduce drinking in the United States "very much." About one in five (21%) believed a labelling requirement might reduce drinking at least "somewhat."

These questions were worded in the following manner:

> "Do you believe there should be a federal regulation requiring beverage containers to list calories and ingredients?"
>
> "Whether or not you approve, how much do you think listing calories and ingredients in alcoholic beverages might reduce drinking in the United States?"

TABLE 9: ATTITUDES TOWARDS CALORIE AND INGREDIENT LABELLING

	Total Respondents %
Should be a federal regulation requiring beverage containers to list calories and ingredients	
Yes	61
No	31
No opinion	8
	100
Would reduce drinking in U.S.	
Very much	5
Somewhat	16
Very little	36
Not at all	38
No opinion	5
	100

Base: 1,039 interview

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR SCIENCE IN THE
PUBLIC INTEREST, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF THE TREASURY,
et al.,
Defendants,
and

DISTILLED SPIRITS COUNCIL OF
THE UNITED STATES, INC.,
Intervenor Defendant.

Civil Action No. 84-2079

FILED
OCT 30 1985
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MEMORANDUM OPINION

Background

This is the second time that this matter is before us. In the earlier proceeding we set aside Treasury's issuance of T.D. ATF-94 which rescinded certain alcoholic beverage ingredient disclosure regulations embodied in T.D. ATF-66, 45 Fed. Reg. 40,538 (1980). At the same time we ordered the reinstatement of the rescinded regulations.[1] Defendants appealed our decision, but on October 6, 1983, three weeks prior to argument before the United States Court of Appeals for this Circuit, the Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) issued T.D. ATF-150, 48 Fed. Reg. 45,549 (1983), which again rescinded the

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[1] Center for Science in the Pub. Interest v. Department of the Treasury, 573 F. Supp. 1168 (D.D.C. 1983). Plaintiff is hereafter referred to as "CSPI" and this decision as "CSPI-I".

Attachment 6

Ingredient Disclosure Rule. With the case in this posture, the appellate court dismissed as moot Treasury's appeal from that portion of our order which mandated an effective date for the reinstatement of T.D. ATF-66. At the same time, it dismissed the appeals of two intervenors, the Wine Institute and the Distilled Spirits Council of the United States, which were directed at overturning this Court's decision on the merits.[2] In so doing, the Court of Appeals, speaking through Judge MacKinnon, refused to vacate the merits of our decision, but "let it stand as it is." CSPI-II, 727 F.2d at 1166. It expressed no opinion "as to any preclusive effect following from the district court decision," which it stated should be left, in the first instance, to the court presiding over the new case. CSPI-II, 727 F.2d at 1166 n.5.

Present Case

In the present litigation, plaintiffs challenge the validity of T.D. ATF-150 by which the Treasury has attempted again to rescind T.D. ATF-66. Plaintiffs, as in the prior litigation, contend primarily that the BATF's rescission violates the Federal Alcohol Administration Act, 27 U.S.C. § 205(e)(FAA Act), and is arbitrary and capricious and an abuse of discretion in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(a) (APA). In addition, they assert that since this second attempt to rescind the Ingredient Disclosure Rule raises a substantial number of identical issues previously before this court in CSPI-I, this court should be free to give its prior opinion in CSPI-I "whatever preclusive effort it deserves, should certain issues turn out to be identical. Judicial efficiency may be served in that manner." CSPI-II, 727 F.2d at 1168 n.6. Plaintiffs also argue that in applying the arbitrary and capricious standard, heightened scrutiny of agency action is appropriate here (1) because this case is one where the agency "arrives at substantially the same conclusion as an order previously remanded by the same court," Greyhound Corp. v. Interstate Commerce Comm'n, 668 F.2d 1354, 1358 (D.C. Cir. 1981), and (2) because it involves the health and well-being of the public. Defendants vigorously contest plaintiffs' contentions. All parties have filed dispositive motions and the matter has been fully briefed.

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[2] CSPI v. Regan, 727 F.2d 1161 (D.C. Cir. 1984). This decision is hereafter referred to as CSPI-II.

This Court's Decision in Vacating T.D. ATF-94

In CSPI-I, we covered the statutory authority contained in the FAA Act, 27 U.S.C. § 201 et seq. (1976), for Treasury's regulation of alcoholic beverages, and pertinent portions of the legislative history setting forth the congressional intent behind the enactment of § 205(e). CSPI-I, 727 F.2d at 1169-70. We will not repeat or expand on what we have previously stated. We also set forth the administrative history of the disclosure regulations which were proposed and published in 1979 and which led to the issuance of T.D. ATF-66 on June 13, 1980, as well as its rescission on November 6, 1981, through the promulgation of T.D. ATF-94. CSPI-I, 727 F.2d at 1170-72. Again, we will not replow this ground, except to repeat that the review and rescission of T.D. ATF-66 were purportedly prompted by the issuance on February 17, 1981, of Executive Order No. 12291, 46 Fed. Reg. 13,193 (1981), as a consequence of which the Treasury concluded that T.D. ATF-66 was not cost effective. CSPI-I, 727 F.2d at 1174-75. In brief, we vacated T.D. ATF-94 for the specific reasons therein stated and, to the extent that such reasons are applicable herein, we assert them again.

Standard of Review

In CSPI-I, we set forth the reasons in favor of a heightened standard of review of the challenged agency action, i.e., because the public health was implicated and because the case involved a rescission of previous agency action taken slightly more than a year before. Since our decision, the Supreme Court in Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 41 (1983)(the "air bag" case), has held that the rescission of any agency rule is subject to the same standard of review as the promulgation of the rule, i.e., whether the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Plaintiffs would distinguish the holding in State Farm and argue that heightened scrutiny should be the standard, not because T.D. ATF-150 rescinded a previous rule, but because BATF reached a substantially similar result as was previously set aside by this Court and because of the importance of the public health issues raised by the case. While we agree with plaintiffs' contention that State Farm is distinguishable[3] and also with plaintiffs' general formulation, we do not regard this issue as dispositive since we reach the same result irrespective of the standard of review employed.

Issue Preclusion

As previously stated, the Court of Appeals, in deciding not to vacate the merits of this Court's decision in CSPI-I and letting it stand, left this court to determine, what, if any, preclusive effect our prior decision was to have. The Distilled Spirits Council (Council) argues that the decision should be given no prior effect against it, since it was not a party, as well as for other reasons, and because the issues in the present case are not identical. Council's Opposition to Plaintiffs' Motion for Summary Judgment, pp. 9-10. As for defendant Council not being a party, this argument is irrelevant because, as an intervenor, it takes the record as it finds it and is bound by all prior adjudications. United States v. Board of School Comm'rs of Indianapolis, Ind., 466 F.2d 573, 576 (7th Cir. 1972).

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[3] The Supreme Court, while holding that the Court of Appeals was correct in finding that the arbitrary and capricious test "applied to rescissions of prior agency regulations" stated that the court had "erred in intensifying the scope of its review based upon its reading of legislative events." State Farm, 463 U.S. at 44.

After careful consideration of T.D. ATF-66 (the original Ingredient Disclosure Rule), T.D. ATF-94 (the first rescission invalidated in CSPI-I) and T.D. ATF-150 (the second rescission, the validity of which is before us for review), we determine that a substantial number of the same issues of law and fact are implicated. These include the following:

1. One purpose of § 205(e) of the FAA Act, while a consumer's statute in the narrow sense, is to give consumers information to allow them to make decisions that might affect their health. CSPI-I, 573 F. Supp. at 1174.

2. While costs are an important consideration, rescission of the Ingredient Disclosure Rule may not be based primarily on costs to the industry. CSPI-I, 573 F. Supp. at 1176-77.

3. Alcoholic beverage ingredients can cause adverse health effects in sensitive individuals. CSPI-I, 573 F. Supp. at 1177-78.

4. BTAF improperly relied on FDA approval of ingredients as a reason for rescinding the Ingredient Disclosure Rule. CSPI-I, 573 F. Supp. at 1177-78.

5. BTAF improperly relied on FDA's standards of indentity for alcoholic beverages as a basis for rescinding the Ingredient Disclosure Rule because standards of indentity do not provide consumers with adequate information about ingredients. CSPI-I, 573 F. Supp. at 1177-78.

All of the foregoing issues have already been decided in the prior litigation, and we give them preclusive effect.

Analysis

T.D. ATF-66 issued June 13, 1980, had its roots in many sources. Aside from a petition filed as early as 1972 by plaintiff CSPI, one of these sources was the Food and Drug Administration (FDA) which, having important responsibilities bearing on the public health, was concerned about adverse reactions to certain alcoholic beverage ingredients.[4] Commissioner Donald Kennedy of the FDA had expressed these concerns when he testified before the Congress in 1978. See Alcohol Labeling and Fetal Alcohol Syndrome, Hearings on S. 1464 before the Subcomm. on Alcoholism and Drug Abuse of the Senate Comm. on Labor and Human Resources, 95th Cong., 2nd Sess. 10 (1978). Although not required to do so, the BATF, as a preliminary matter, conducted a Regulatory Analysis which set forth nine alternative ways of dealing with the problems. 45 Fed. Reg. 40,539 (1980).

Pursuant to this Regulatory Analysis, the Treasury engaged the services of the BDM Corporation, an independent consultant. The BDM study is the only in-depth attempt sponsored by the Treasury to consider the costs and benefits for all nine alternative approaches. The BDM study directed its attention to the matter of health hazards, examined consumer need, and weighed the cost of ingredient disclosure. There is no other comparable study in the present record.

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[4] FDA had previously attempted to issue regulations on this subject but was prevented from doing so as a result of a suit brought by intervenor Council and other industry members. Brown-Forman Distillers Corp. v. Mathews, 435 F. Supp. 5 (W.D.Ky. 1976). The court held that BATF has exclusive jurisdiction over alcoholic beverage labeling. Id. at 17.

The Treasury, as a further step in its Regulatory Analysis, utilized another independent consultant, the Opinion Research Corporation of Princeton, New Jersey (Gallup) to conduct a consumer poll to assess whether consumers wanted ingredient labeling and wanted it enough to pay for this information.

After considering the results of the BDM study and the Gallup Poll, and after taking into account various uncertainties, it reached a decision to require that a list of basic ingredients and additives be set forth on alcoholic beverage labels. Under certain conditions, it gave manufacturers the option of placing a notice on the label informing consumers where to write for ingredient information (address label option).

As finally enacted, the Ingredient Disclosure Rule was a compromise. Only the amount of information which would be useful to consumers and at the same time not be unduly burdensome to the industry was required to be disclosed on the label. Incidental additives, defined as those used or present in insignificant amounts, were exempted. Finding that the requirement could withstand cost benefit analysis, its decision to issue was grounded on factors of health and the needs of consumers for such protection. 45 Fed. Reg. 40,540 (1980). Despite its thorough and thoughtful treatment of a complex subject, it was shortly to be overturned.

In early 1981, soon after the present administration came into office, the BATF sharply reversed its prior position and proposed to rescind the recently promulgated Rule. It emphasized that under Executive Order No. 12291, all regulations were required to be cost beneficial. On November 9, 1981, the BATF issued T.D. ATF-94, rescinding the Ingredient Disclosure Rule. In so doing, it concluded, inter alia, that "the ingredient labeling regulations would result in increased costs to the consumer and burdens on the industry which are not commensurate with the benefits which might flow from the additional label information," that ingredient labeling would not result in an appreciable benefit to consumers, and that existing labeling requirements and standards of identity were sufficient to protect the consumer and ensure product integrity. 46 Fed. Reg. 55,094 (1981). On November 8, 1983, this court invalidated T.D. ATF-94 and ordered reinstatement of the Ingredient Disclosure Rule not later than February 8, 1984. CSPI-I, 573 F. Supp. at 1179. Five months later, BATF, for a second time, has proposed to rescind the Ingredient Disclosure Rule. Following the receipt of comments, BATF on October 6, 1983, issued T.D. ATF-150, the validity of which is the subject of the present litigation.

T.D. ATF-150 is similar to T.D. ATF-94 in all essential respects except that it requires the disclosure of FD&C Yellow Dye No. 5, a color additive, the inclusion of which plaintiff had long advocated. As to other ingredients, it agreed to consider the necessity of mandatory labeling on a case-by-case basis in further rulemaking proceedings upon the basis of which it purportedly can make an informed decision. The BATF no longer attempts to rely on the alleged disadvantage to our international commitments caused by the increased requirements. Though going into somewhat greater detail, the reasons advanced in support of T.D. ATF-150 are basically the same as those underlying T.D. ATF-94, i.e., the costs are disproportionately high when compared with the benefits to be derived and consumers are adequately protected under the existing regulations. 48 Fed. Reg. 27,783 (1983). It particularly states that there is "neither evidence of a substantial consumer interest in the legislation nor clear evidence that the information would provide substantially useful information to consumers generally. . . ." 48 Fed. Reg. 45,555 (1983). In attempting to explain its conclusions so contrary to those of T.D. ATF-66, it contends that its findings "are not as different from those in 1980 as it might appear" because in T.D. ATF-66 the Department recognized the uncertainties of the data concerning "health and consumer benefits" and was concerned about "these uncertainties and the costs" of mandating labeling. 48 Fed. Reg. 45,555 (1983). It states that many of the conclusions of T.D. ATF-66 were unwise and, while within the zone of legitimate discretion, further asserts that upon reconsideration "a different decision is preferable and within the zone of discretion under the FAA Act." 48 Fed. Reg. 45,556 (1983).

A careful comparison of T.D. ATF-150 with T.D. ATF-94 compels the conclusion that BATF has adopted essentially the same rationale which this court rejected in CSPI-I. More specifically, it ignores certain of the most significant evidence of record, including the Gallup consumer poll showing consumer preferences, the BDM study, and FDA's consistent support of ingredient labeling,[5] as well as the published medical literature. Its references to FDA's standards of identity as providing adequate protection to consumers is contrary to our findings in CSPI-I and attempts to raise issues which are precluded. Furthermore, T.D. ATF-150, as did T.D. ATF-94, again places improper reliance on considerations of cost in violation of the FAA Act. This is shown when it discounts the availability of the address label option to provide a "painless and inexpensive" form of ingredient disclosure. 48 Fed. Reg. 45,555 (1983). This is further reflected in its decision to include the labeling of FD&C Yellow Dye No. 5 since, because it would be used on only a few products, "the cost would not be substantial in comparison with the demonstrated benefit. . . ." 48 Fed. Reg 45,554 (1983). In fact, the entire fabric of T.D. ATF-150 is permeated with attention to matters of cost.

On reading T.D. ATF-150, we were immediately impressed with a strong feeling of deja vu and that we had heard most of these supporting contentions before. This impression turned out to be all too true. Not only did the BATF employ the same arguments to support its original rescission in T.D. ATF-94 but, in the preamble, it frequently adopted the verbatim or substantially verbatim language found in the briefs of the Treasury and the intervenor previously submitted to this court in CSPI-I and long before "new" comments were received and considered by BATF. In its treatment of subjects designated "Consumers' Informed Choice," "Health Benefits," and "Costs", the unidentified authors of T.D. ATF-150 have simply "lifted" large portions from the earlier briefs as the following will graphically show:

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[5] While the FDA did not directly comment on the first rescission, its position as early as 1978 was a matter of public record. See supra p. 7. In the rulemaking proceeding which antedated the issuance of T.D. ATF-150, it did file a comment in favor of ingredient labeling. Letter of Joseph P. Hile, Associate Commissioner of Regulatory Affairs, FDA to BATF (July 20, 1983).

Subject	Total Length in Lines	Lines Taken from Prior Briefs	%
Consumers Informed Choice	212	77.5	36%
Health Benefits	144	64	44%
Costs	195	123	63%

Furthermore, this wholesale appropriation has taken place without any attribution as to the real sources of this material or any indication of the fact that it had been previously submitted in support of action which we invalidated in CSPI-I.

Conclusion

Based on all of the foregoing, we conclude that T.D. ATF-150 represents a predetermined "mindset" to reinstate a previous position which was held unlawful. It fails to provide a "reasoned explanation" for its second attempt to reverse the policies underlying the issuance of T.D. ATF-66. In its reliance on issues precluded by our decision in CSPI-I, T.D. ATF-150 has asserted again many of the same considerations which we considered and held to be invalid. As in the case of T.D. ATF-94 the BATF has again violated the FAA Act and without adequate support in the record, has taken action which is arbitrary, capricious, and an abuse of discretion in violation of the APA.

An order consistent with the foregoing has been entered this day.

J. H. Pratt
John H. Pratt
United States District Judge

Date: 30 October 85

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ORDER

Upon consideration of the parties' cross-motions for summary judgment, the memoranda, affidavits and other papers filed, and the entire record herein, it is by the court this 30th day of October, 1985,

ORDERED that plaintiffs' motion be and the same hereby is granted, and it is

ORDERED that the final rule contained in T.D. ATF-150 and issued by the Department of the Treasury on October 6, 1983, 48 Fed. Reg. 45,549, is vacated; and it is

FURTHER ORDERED that within thirty (30) days of the date of this order the Department shall announce the new date upon which T.D. ATF-66 will be mandatory, the new date not to be any later than six (6) months from the date of this order.

J.H. Pratt
John H. Pratt
United States District Judge

ALCOHOLIC BEVERAGE INGREDIENT LABELING

"GOOD MORNING AMERICA TRANSCRIPT" - FEBRUARY 7, 1986

ANNOUNCER: John Stossel continues his series of special reports with a look at what you might not know you're drinking.

(DEPICTIONS OF ALCOHOLIC BEVERAGES)

JOHN STOSSEL (J.S.): How would you like to quench your thirst with some cold, foamy propylene glycol alginate? No? Well then, how about some delicious sulfer dioxide with dinner? Or a touch of dipotassium phosphate after your meal? I hate to say it, but some of your favorite -- and my favorite -- drinks have additives in them you probably don't know about. It's hard to find out about them because none of this stuff's labeled. You know, it's funny, because almost everything else is. Soft drinks are. Even dog food is labeled. So why not alcoholic drinks? Well, the main reason is that it's regulated by a different government agency. The FDA handles food, the Bureau of Alcohol, Tobacco, and Firearms regulates drinks. It currently doesn't feel labeling is necessary. The beer, wine, and liquor industries certainly agree with that. They cite trade secrets. They say it will cost too much. And they say there's no need. They say people are not getting sick or dying from chemicals in drinks. I asked a proponent of labling about that.

Attachment 7

BRUCE SILVERGLADE, CSPI: People are dying. For example, a person died just last July from sulfiting agents in wine. In the mid-1960's about twenty persons died from cobalt sulfate, which was used as a foam enhancer in beer.

J.S.: Why do they say people are not being hurt by this?

B.S.: Well, they may as well be saying the earth is flat. They have been denying the truth for about ten years.

J.S.: Why do you think they resist?

B.S.: They fear the truth. For marketing reasons, they want to keep consumers in the dark, so that they can pass off what are essentially chemical concoctions as pure and natural beverages. But it just ain't so.

JOHN DE LUCA: That's not correct. It's not a chemical concoction.

J.S.: John DeLuca is President of the Wine Institute.

J.D.: We believe that wine is the fermented juice of ripe, sound grapes.

J.S.: He has a point. And not just about wine. Beer is also mostly natural. It's made with water, yeast, malted barley, and hops. However, some manufacturers do add chemicals to control the color, how high the foam will go, how long the foam will last. And I was surprised to find an article in the magazine Food Engineering that shows how Miles Laboratories, the people who Alka-Seltzer, have found a way to substitute enzymes for the more expensive natural malt. "Brew-Enzyme" they call it. They won't say which beer companies they're selling it to. Hard liquor is probably the freest of additives. Usually its just alcohol distilled from grain, yeast, and water. [It's] the fancier stuff, the liqueurs, the pre-mixed cocktails that contain the most additives. "Cream", for example, is a tricky word. Bailey's uses real cream. Hublein spells it "C-R-E-M-E" and uses non-dairy chemicals. And food dyes are used in some liqueurs. Mmm, nothing like a blue drink. And chemical companies advertise to wine makers, too. So why not just label these things? We don't know how many people are allergic. Why not just put the ingredients on the bottle so those people would know. We'll look at that and check into which ingredients might give you an allergic reaction right after this. (COMMERCIAL BREAK)

ANNOUNCER: Here's John Stossel again to tell us some manufacturers don't mind telling us what we're drinking.

J.S.: The beer industry is the least opposed to labeling. Says the Center for Science, that's because they have the least to hide. The liquor and wine industries are more opposed. They say labeling would be misleading. For example, the distillers lobbyists told us, "If we make vodka from corn, we might have to put 'corn' on the label. That would make people think they're getting nutritional benefit from vodka, and that's misleading." The industry's main argument is that millions of people have been drinking liquor and wine for thousands of years without getting sick. Labeling would just frighten them.

J.D.: Because it would lead to the misleading notion that in drinking wine you are drinking a concoction that has been made up of different elements, a little bit of this and a little bit of that added up all together equals wine.

J.S.: But if it isn't made up of these chemical concoctions --

J.D.: Yes...

J.S.: --then why not just say so on the label?

J.D.: Because we believe that it would be misleading to the consumer. Why have government involvement unless you have a real confirmation that there is a real health issue involved?

J.S.: He says there's no health issue. But remember sulfites?

The F.D.A. plans to ban them in salad bars because many asthmatics and some other people have severe reactions. Wine makers add sulfite to keep the wine from fermenting further once it's in the bottle. But the industry says its sulfites are chemically different, so they're not likely to cause reactions. They won't convince Lois Franklin of Fort Collins, Colorado. She's an asthmatic, and some asthmatics are unusually sensitive to sulfites. What happens?

LOIS FRANKLIN: I drink wine, as soon as I would have the slightest sip, I would start choking, and get itchy and scratchy, and it goes into a very severe attack.

J.S.: "Severe attack" meaning...

L.F.: That I can't breathe. It cuts off the airways. I've had actual trips to the hospital and it's so frightening. I can't even talk by the time I get there; someone, of course, has to take me, and they have to give me adrenaline right away.

J.S.: She even had to stop taking communion wine in church. That little makes her sick. We know of one sulfite-sensitive man who died after drinking wine. Daniel Tsevat was a 32-year-old Dallas man. One afternoon last July, after sipping some wine, he started choking, lost consciousness, and by the time he got to the hospital, he was dead.

J.D.: Without me being a coroner or... We asked our doctors to look up that report. The individual involved was a very sick person, with incredible asthmatic hypersensitivity. And...--

J.S.: Well, these are the people we're talking about.

J.D.: Yes... Yes. The probability here, according to our doctors, is not high at all. To put it on a label with a health scare implication implies that there's something intrinsically wrong with the product.

J.S.: The debate continues. The various parties are now fighting it out in the courts. Meanwhile, what can _you_ do if you have an allergy? Well, you could write the government agency that regulates the manufacturers; they have the information. However, they won't give it out. It would violate trade secrets, they say. They suggest you write the companies themselves. We tried that, we wrote fourteen saying, "I'm a consumer who's allergic to some additives. Would you tell me what's in your products?" Some companies were very responsive. Taylor Wine, for example, listed everything, including the scary-sounding stuff. So did Stroh's Beer. Anheuser-Busch, Genessee Beer, and Coors sent us a list. However these companies didn't answer our letter at all, and it's been a month already. [COMPANY NAMES SHOWN: Brown-Foreman Distillers; Ernest and Julio Gallo Wines;

Glenmore Distillers; Christian Brothers Wines; National Distilleries; Seagrams Wines; Pabst.] And one company responded, but didn't tell the whole truth. Almaden said its chablis is made "just from wine grapes." They didn't say it includes sulfites, though it does. We called Almaden. They said they meant to mention sulfites, they just sent us the wrong letter. Finally, you should know that some companies are labeling ingredients voluntarily. Anheuser-Busch, for example -- three cheers for them. They label Michelob, Bud, and their other beers. You drink those products, you know exactly what you're drinking.

Los Angeles Times

Monday, December 2, 1985

What's in the Bottle?

Federal food and drug laws make it clear that consumers should have information that helps them make decisions affecting their health. But consumers at the beer, wine and liquor counter are still denied information about alcoholic-beverage ingredients to which they could be allergic or that could cause other health problems. The House will vote this week on a measure that could prolong that unhealthy ignorance.

The Center for Science in the Public Interest, a Washington-based nonprofit group that concentrates on food and nutrition, has compiled a list of ingredients about which it feels the public should know. For example, the wine industry uses sulfur dioxide to kill bacteria on grapes, to stop fermentation and to preserve the wine. But thousands of Americans, especially those who suffer from asthma, may be particularly sensitive to sulfur dioxide, as well as to sodium bisulfite and potassium metabisulfite, which are preservatives that are used in wine. The yeast used in fermenting beer, wine and spirits causes problems for some people, as does the corn in beer and in some liquor.

Twice the Treasury Department's Bureau of Alcohol, Tobacco and Firearms has issued a rule that manufacturers must either list the ingredients on the labels or tell consumers on the labels where to write for information. Twice the department has rescinded its rule, and now twice a federal district court has ruled in favor of labeling.

This week the House will vote on a measure that would deny the Treasury Department the money to enforce this rule until all appeals are exhausted. In its last decision, on Oct. 31, the court said, "Alcoholic-beverage ingredients can cause adverse health effects in sensitive individuals." The House should buy this round for them.

Attachment 8

Chemical Additives in Booze

By the Center for Science in the Public Interest

CSPI Books Washington, D.C.

Attachment 9

II. Calorie Content of Alcoholic Beverages

Regular Beers	Calories*** (12 oz. servings)	Alcohol Content*** (By Volume)
1. Michelob	168 *	4.9%
2. Schmidt	165	4.8
3. Black Horse Ale	162	5.0
4. Knickerbocker	160	4.6
5. Rheingold	160	4.6
6. Budweiser	156	4.9
7. Busch Bavarian	156	4.9
8. Miller	150 **	
9. Eastside Lager	145	
10. Buckeye	144	4.6
11. DuBois Beer	144 *	
12. Utica	144 *	
13. Meister Brau Premium	144	4.6
14. Schmidt (low alcohol)	142	3.2
15. Black Label	140	
16. Burgie!	140 *	
17. Pabst	140 *	
18. Tuborg	140	4.8
19. Budweiser (low alcohol)	137	3.9
20. Busch Bavarian (low alcohol)	137	3.9
21. Pearl	136 *	
22. Heidelberg	133	4.6
23. Stroh Bohemian (low alcohol)	126	3.2
AVERAGE: (excluding lows)	149	4.75

Light Beers	Calories** (12 oz. servings)	Alcohol Content** (By Volume)
1. Michelob Light	134	4.1%
2. Red, White, Blue (Pabst)	119	3.6
3. Stroh Light	115	4.1
4. Budweiser Light	108	3.5
5. Gablinger's Extra Light	99 ***	4.5
6. Black Label Light	96	4.1
7. Iron City Light	96	4.2
8. Erie Light	96	4.1
9. Meister Brau Lite	96 ***	4.6
10. Miller Lite	96	4.2
11. Schlitz Light	96	3.6
12. Schmidt Light	96	4.1
13. Steg Light (Stegmaier)	96	3.9
14. Ultra Light (DuBois)	96	4.2
15. Utica Light	96	4.1
16. Amstel Light (Holland)	96	3.7
17. Burgie! Light Golden	70	2.9
18. Pabst Extra Light	70	2.4
19. Pearl Light	68	2.8
AVERAGE:	97	3.7

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*Calculated from information given on brewer's light beer.

**As indicated on container or obtained from the manufacturer.

***From *Calories and Carbohydrates*, 4th revised edition by Barbara Kraus. © 1971, 1973, 1975 by Barbara Kraus, © 1979, 1981 by the New American Library. Reprinted by arrangement with the New American Library, Inc., New York, N.Y.

Liquor (by proof) gin, rum, vodka, whiskey	**Calories†** **(1 1/2 oz. = 1 jigger portions)**
100	124
94	116
90	110
86	105
80	97

Table Wines **(4 oz. portions)**	**Calories††**
Sparkling Burgundy	115
Sweet Sauterne	110
Dry Red	85
Dry Rosé	82
Dry White	80
"Light" White	60

Aperitif & Dessert Wines	**Calories††**
Sweet Vermouth (3 oz.)	135
Kosher (2 oz.)	130
Dry Vermouth (3 oz.)	100
Port (2 oz.)	100
Sweet Sherry (2 oz.)	95
Dry Sherry (2 oz.)	80

†Data from USDA Agriculture Handbook No. 456.

††Used by permission from D.J. Forkner, "The Professional Nutritionist" Spring, 1982.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
DEPARTMENT OF THE TREASURY

Petition to Amend)
Alcoholic Beverage)
Labeling Regulations) Docket No. ____________
to Provide Information)
Regarding Calorie)
Content)

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

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Attachment 10

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Director
Bureau of Alcohol, Tobacco and Firearms
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20226
Attention: R:R

PETITION TO AMEND REGULATIONS

The undersigned submit this petition pursuant to the Administrative Procedure Act, 5 U.S.C. $551 et seq.; and Section 71.41(c) of Title 27 of the Code of Federal Regulations. Petitioners request the Director of the Bureau of Alcohol, Tobacco and Firearms ("BATF") to issue regulations to require the calorie content of all alcoholic beverages to be listed on the label or container of each product, and to take other appropriate measures to insure that this information is provided in a clear, non-misleading manner.

INTRODUCTION

Alcoholic beverages--beer, wine and distilled spirits--contain signicant levels of calories and can contribute to obesity, a problem of concern to millions of consumers. Yet, calorie-conscious consumers find it difficult, if not impossible, to determine the calorie content of alcoholic beverages because current regulations do not require that calorie information be listed on all container labels. At this time, BATF regulations require only manufacturers of "light" (low-calorie) beverages to list calorie information on labels.

The range of calorie content in different brands of alcoholic beverages is great. Beer contains 70-170 calories per

12 ounces, a glass of wine between 60-135 calories, and a jigger of liquor 95-125 calories. [1] Furthermore, the variation in calorie content of different brands of so-called "light" alcoholic beverages is similarly great. Hence, the term "light" confuses and misleads consumers. For example, light beers contain between sixty-eight and one hundred and thirty-four calories.[2] At least one light beer appears to provide more calories than a competitor's regular brand. Brand-to-brand variations in calorie content information make informed purchasing decisions virtually impossible.

I. CALORIE LABELING OF ALL ALCOHOLIC BEVERAGES SHOULD BE REQUIRED BY BATF TO PROVIDE CONSUMERS WITH ADEQUATE INFORMATION ABOUT THE PRODUCTS THEY MAY PURCHASE.

A. Alcoholic beverages contribute significantly to the problem of obesity.

Eighty million Americans are clinically overweight. [3] Alcoholic beverages, which are rich in calories but have little nutritional value, contribute significantly to calorie intake and obesity for many Americans. Obesity can be a killer disease, as well as a serious psychological and social problem. Obese people face a greater than average likelihood of developing diabetes, hypertension and heart disease.

In 1980, the average American consumed approximately two gallons of distilled spirits, two gallons of wine and twenty-four gallons of beer. [4] Furthermore, alcoholic beverage consumption is increasing. Average consumption for all persons older than fourteen is thirty percent higher than fifteen years ago. [5]

These figures mean that today the American population consumes more than ten trillion calories (50,000 calories per person) each year in the form of alcoholic beverages.

Calories consumed in the form of alcoholic beverages mean that alcohol provides between five and six percent of the average daily calorie intake for every man, woman and child in the United States. Obviously, the figure is much higher for the drinking portion of the public. One survey indicates that thirty percent of the drinking population consumes eighty percent of the alcohol consumed annually. This same survey also reveals that ten percent of the drinking population consumes fifty percent of the alcohol. [6]

When alcoholic beverage consumption is viewed in light of these figures, it is no wonder that a panel of the White House Conference on Food, Nutrition and Health in 1969 concluded that

> By virtue of the dilution effect of their nutritionally empty calories alcohol containing beverages can disrupt the balance of essential food factors to total calories, to harmful levels. [7]

The panel also stated the following as one of its objectives:

> To educate those who drink to compensate nutritionally for their empty calories that they get in significant amounts by the consumption of even so-called socially acceptable amounts of alcoholic beverages. [8]

The Conference panel formally recommended that appropriate federal agencies disseminate information to the lay public informing them of the potential of alcohol to disrupt the calorie and nutrition qualities of their diets. [9]

In addition, the Nutrition Foundation, an organization sponsored by the food industry, recommended, in its 1966 publication entitled Obesity, that people should avoid excess amounts of alcohol. [10] The Foundation further cautioned that for someone trying to diet, "[a]lcoholic drinks, of course, are a hazard." [11] The Foundation's words of warning are more important today than they were seventeen years ago given the fact that per capita consumption of alcoholic beverages has been rising steadily since the mid-1960's. [12]

B. Consumer demand for calorie content information is very high.

Millions of Americans are extraordinarily concerned about obesity. According to one newspaper account, the public spends $10 billion annually on diet books, pills and other aids. [13] Such statistics indicate that consumers are hungry for information that may assist them in the battle of the bulge. Calorie labeling will be an obvious benefit to weight-conscious people, and will help reduce the incidence of obesity in America today.

In a recent Gallup poll, 62% of respondents said they favored a regultion requiring labels on alcoholic beverages to disclose calories as well as ingredients. [14] Furthermore, in a 1979 FDA study of citizen comments on food labeling, sixty-two percent of the majority of the commenters who used nutritional information labeling chose calorie content as the most important piece of information that could be provided. [15] In addition, an

FDA sponsored Consumer Food Labeling Survey, conducted in 1978, concluded that consumers ranked the provision of calorie content information as the highest priority food label revision that they desired. [16].

Consumers are even willing to incur higher prices for products containing nutritional information. The Food and Drug Administration undertook a survey of consumers' nutrition knowledge in 1975. One measure of shoppers' attitudes towards nutrition labeling was obtained by asking them if they would be willing to pay extra (up to fifty cents each week) so that this information could be put on food products. Two-thirds of those surveyed were willing to pay at least ten cents more each week for nutritional labeling.

In spite of this very high demand for calorie information, the vast majority of alcoholic beverages do not contain this vital information. Under currently proposed regulations, BATF would only require calorie information for "light" products. Given the strong consumer demand for such information, BATF should exercise its authority to require all alcoholic beverages to provide calorie information.

Armed with the additional information that calorie labeling would provide, consumers would be able to make wiser and more informed purchasing decisions. At the very least, consumers would be reminded that alcoholic beverages contain significant numbers of calories. Those consumers who choose to limit their daily or weekly calorie intake from alcoholic beverages would be able to buy low-calorie varieties. Those consumers who had previously assumed that all beers or wines or mixed drinks contained "about" the same number of calories would have the opportunity to switch to lower calorie brands if they so choose. The end result would certainly be a better-informed, and perhaps slimmer, alcoholic beverage-consuming public.

C. The costs of calorie content labeling are minimal.

Though the exact costs to industry of complying with the calorie content rule are not available, a comparison to the anticipated compliance costs of other proposed label modifications indicates that the cost of adding a simple declaration of calorie content would be minimal.

The cost-benefit study of BATF's rescinded Ingredient Labeling Rule concluded that if the additional information was provided on existing labels, "industry costs could be relatively small." [17] Common sense indicates that a calorie disclosure would cost much less than ingredient disclosure, because less chemical analysis would be required and because the calorie content of beverages remains virtually constant during production.

In another study, A.D. Little, Inc. calculated the economic impact of an FDA proposal to require food labels to note that ingredients are listed in descending order of predominance by weight. Industry compliance would have resulted in passed-on costs to consumers raising the price of food a maximum of seven-hundredths of one percent if the requirement were phased in over a two-year period. [18] The cost of such labeling initiatives is undoubtedly much less, as the cost estimates in this study were based in part on data supplied by the food industry, which generally opposes such proposals. Compliance costs to the alcoholic beverage industry would probably be less, but certainly no more, than the estimated costs of the FDA proposal.

D. BATF should implement its statutory mandate to protect consumer health by requiring calorie content information on alcoholic beverage labels.

BATF's statutory mandate is the Federal Alcohol Administration Act, 27 U.S.C. §201 *et seq*. ("FAA Act"). The FAA Act provides a comprehensive scheme for federal regulation of the alcoholic beverage industry. One of Congress' goals, in enacting the FAA Act, was to require that alcoholic beverage manufacturers provide consumers with information that would inform them about the identity and quality of alcoholic beverages. Consequently, Section 205(e)(2) of the FAA Act specifically assigned responsibility to the Administrator (now the Director of BATF) to issue regulations for alcoholic beverage labels "as will provide the consumer with adequate information as to the identity of the products." 27 U.S.C. §205(e)(2). Calorie content is precisely the kind of helpful information that consumers want and that BATF should require under Section 205(e)(2). [19]

The legislative history of Section 205(e)(2) makes it clear that Congress' chief concern was to provide consumers with complete label information about the content of alcoholic beverages. The following statement made by the director of the then

Federal Alcohol Control Administration is of particular relevance to the purpose of Section 205(e)(2):

> Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straightforward and truthful. They should not be confined, as the pure food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle [emphasis added]. Hearings on H.R. 8539 Before the House Comm. on Ways and Means, 74th Cong., 1st Sess. (1935).

BATF's statutory mandate to protect consumer health by requiring that specific information appear on wine, beer and liquor labels has been recognized by the courts. In *Center for Science in the Public Interest v. Dept. of the Treasury* (No. 82-0612, D.D.C., February 9, 1983), the court stated that the clear purpose of the FAA Act, 27 U.S.C. §205(e), was to provide consumers with information to allow them to make decisions that might affect their health, *slip op*. at p. 9. Similarly, in *Wawszkiewicz v. Department of the Treasury*, 480 F.Supp. 739 (D.D.C. 1979), *rev'd, in part, on other grounds*, 670 F.2d 296 (1981), the court stated that the FAA Act called for regulatory provisions which will provide adequate information as to the identity and quality of alcoholic beverages, 480 F. Supp. at 745.

Alcoholic beverages contribute greatly to the problem of obesity in America, and consumer demand for calorie information is high. Accordingly, BATF should require calorie labeling on all alcoholic beverages. [20]

II. EXISTING REGULATIONS FOR "LIGHT" ALCOHOLIC BEVERAGES PERMIT DECEPTIVE AND MISLEADING LABELING PRACTICES.

A. Variations in the calorie content of "light" beverages deceive consumers.

Current BATF policy, and regulations proposed in the Federal Register, 45 Fed. Reg. 83530 (1980), both fail to set specifications for the calorie content of "light" alcoholic beverages. Among light beers, for example, the calorie content can vary almost two-fold, from a low of 68 calories (Pearl Light) to a high of 134 calories (Michelob Light). With no prescribed range of calories for light beers, the unsuspecting consumer may be misled by the fact that a beer as high in calories as Michelob Light may be called a "light" beer. BATF regulations which permit the industry to define the range of calories in light beverages create consumer deception and are inconsistent with the requirements of Section 205 of the FAA Act.

Furthermore, some light beers may even contain more calories than a competitor's regular beer. For instance, Michelob Light with 134 calories has a higher calorie content than Heidelberg regular beer, which has 133 calories, and Stroh Bohemian (low alcohol), which has 126 calories. Since regular beers are not labelled for calorie content, it is impossible for a consumer to be aware of this discrepancy. The resulting deception to the public must be corrected by BATF in the form of a regulation, which limits the number of calories allowed in "light" alcoholic beverages.

By way of comparison, the Food and Drug Administration has promulgated regulations for low-calorie foods and beverages which minimize the possibility of consumer deception. For example, to minimize confusion concerning the calorie content of certain diet beverages made from nutritive and non-nutritive sweeteners, the FDA requires that such products be formulated so that their caloric value is at least fifty percent less than the caloric value of comparable products made without artificial sweeteners, 21 C.F.R. §100.130(b). Additionally, the label of this product must bear a statement of the caloric content per fluid ounce, 21 C.F.R. §100.130(d)(2).

FDA has also recognized the possibility that consumers may be deceived or misled by labeling that claims or implies that a food may be useful in reducing or maintaining caloric intake or body weight. Therefore, FDA regulations allow a food to be labeled as "low calorie" only if a serving of the food supplies no more than 40 calories, 21 C.F.R. §105.66(c)(i). That same regulation allows a food to be labeled as "reduced calorie" only if a comparison of its calorie content with the calorie content of an equivalent serving of the same food for which it would substitute reveals a calorie reduction of at least one-third, 21 C.F.R. §105.66(d)(i).

FDA regulations governing the labeling of low calorie food and beverages represent a logical effort to minimize consumer deception. Governmental restrictions on the calorie content of low and reduced calorie foods and beverages enable consumers to make more informed purchasing decisions and eliminate the possibility of a "Michelob Light-Heidelberg" situation where the "low calorie" food actually contains more calories than a comparable regular calorie food of a competitor.

Petitioners call on BATF to follow the FDA's lead and limit the number of calories which can be contained in "light" alcoholic beverages. For malted beverages, we recommend that BATF permit "light" beers to contain no more than 100 calories per serving. At the present time the calorie content of most "light beer" is about 100 calories or less per 12 ounce serving. BATF may find this figure a useful starting point for determining an upper limit on calorie content of light beer. A similar survey of "light" wines should be conducted with the aim of setting upper limits on the calorie content of these beverages. In this manner, consumer deception can be prevented.

B. Section 205(e)(1),(4) of the FAA Act requires BATF to modify labeling regulations that engender deceptive or misleading trade practices.

BATF has limited discretion in matters involving misleading or deceptive trade practices. Section 205(e) of the FAA Act requires the Director of BATF to issue regulations for alcoholic beverage labels

> ... (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relative to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer;... [and] (4) as will prohibit statements on the label that are ... false [or] misleading... 27 U.S.C. §205(e).

The legislative history of Section 205(e) is clear, *supra*, p.8. The purpose of Section 205(e) shows:

> ...the purpose was to carry that regulation into certain particular fields in which control of interstate commerce in liquors was paramount and necessary [emphasis added]. Hearings on H.R.8539 Before the House Comm. on Ways and Means, 74th Cong., 1st Sess. (1935) (statement of Joseph H. Choate, Administrator, Federal Alcohol Control Administration).

Thus, Congress chose to limit BATF's discretion, and misleading or deceptive labeling practices must be prohibited.

BATF's statutory mandate to prevent misleading or deceptive labels was also recognized by the D.C. Circuit in Wawszkiewicz v. Department of the Treasury, supra. [21] In discussing Section 205(e) the circuit court stated that BATF "is directed to prohibit" misleading statements irrespective of falsity, 670 F.2d at 302. BATF may not authorize any deceptive labeling unless it gives sufficient explanation based upon facts in the record, Id. at 303. See also, CSPI v. Dept. of the Treasury, No. 82-0610, supra, slip op. at p. 14. Accordingly, BATF must now act to alleviate consumer deception that now results from its current regulatory scheme.

CONCLUSION

A practical solution to providing adequate information to alcoholic beverage consumers is for BATF to implement its statutory mandate, 27 U.S.C §205, and require calorie content to be listed on all alcoholic beverages. This will insure that consumers can make informed choices about competing brands. BATF should take such action in light of the correlation between alcohol consumption and obesity, the strong consumer demand for mandatory calorie information on all foods and beverages, and the minimal cost of such regulations to the industry.

BATF has limited discretion to prevent deceptive and misleading labels. In order to correct the deceptive and misleading consequences of significant brand-to-brand variations in calorie content, BATF must exercise its power to issue regulations that would place an upper limit on the number of calories in "light" alcoholic beverages.

Respectfully submitted,

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Dated: February 28, 1983

Co-Petitioners:

American Nurses Association
American Public Health Association
American Society of Bariatric Physicians
Dr. LeClair Bisseil (President, American Society on Alcoholism)
Consumer Federation of America
Center for Science in the Public Interest
Diet Center, Inc.
Diet Workshop, Inc.
National Association for Public Health Policy (Council on Alcohol Policy)

National Federation of Licensed Practical Nurses
National Women's Health Network
Dr. Nathan Pritikin (Longevity Research Center)
U.S. Conference of Local Health Officers

Footnotes

1. Chemical Additives in Booze, Center for Science in the Public Interest, 1982, p. 93-95.

2. Ibid., p. 93-94.

3. Health and Nutrition Examination Survey (HANES), National Center on Health Statistics, August 30, 1979.

4. Statistical Abstract of the U.S. 1981, U.S. Census Bureau.

5. Healthy People, U.S. Dept. of Health, Education and Welfare (1979), p. 10-12.

6. The Public Health Approach to Problems Associated with Alcohol Consumption, National Institute of Alcoholism and Alcohol Abuse, 1981, Chart I-13.

7. Final Report, White House Conference on Food, Nutrition and Health, May 6, 1969, p. 57.

8. Ibid., p. 57

9. Ibid., p. 57

10. Obesity, Nutrition Foundation, p. 11, 1966.

11. Ibid., p. 14.

12. NIAAA, supra, note 6, Chart I-2.

13. New York Times, February 24, 1981, p. C1: "What Does a Diet Actually Do?"

14. "Gallup Poll", commissiored by the National Council on Alcoholism, January 20, 1983.

15. 44 Fed. Reg. 75995 (December 21, 1979).

16. 44 Fed. Reg. 75995 (December 21, 1979).

17. Regulatory analysis of partial ingredient labeling of beer, wine and distilled spirits, BDM Corporation, p. I-4, February 8, 1980.

18. Economic Impact Analysis of a Declaration that Ingredients are Listed in Descending Order of Predominance; Final Report to the FDA; HHS Contract No. 223-79-8052; A.D. Little, Inc., May, 1981, p. 231-232.

19. In light of Petitioners admonition to BATF to follow the lead of FDA in preventing deceptive and misleading labels, see infra at Section II, it should be noted here that BATF is empowered to correct labels on the grounds of "adequacy"; a power which FDA does not have. Thus, BATF has greater authority to require label information than FDA.

20. Petitioners urge BATF to order mandatory, as opposed to voluntary, labeling. Based on past experience, a voluntary effort will not succeed. In March, 1982, the Center for Science in the Public Interest wrote to eighty-six producers of beer, wine and liquor requesting that calorie information be voluntarily labeled. No substantive responses were ever received. Other voluntary labeling programs have been similarly unsuccessful. FDA's vigorous efforts to encourage food manufacturers to voluntarily list sodium information on labels has resulted in only a 6% increase in the number of manufacturers who provide such information. FDA's semi-voluntary nutritional labeling program has led only 40% of food manufacturers to provide such information.

21. See also, Continental Distilling Corp. v. Humphrey, 247 F.2d 796 (D.C. Cir. 1957), where the court upheld BATF's authority under Section 205(e) to issue label regulations "to aid in preventing deception." 247 F.2d at 797.

BEFORE THE BUREAU OF ALCOHOL, TOBACCO
AND FIREARMS

Memorandum of Miller Brewing Company In Response to Advance Notice of Proposed Rulemaking Regarding the Advertising of Malt Beverages

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Attachment 11

B. Use of the Terms "Light" and "Light Beer" in the Advertising of Beers Containing More Than 100 Calories, Such as Michelob Light, Is Misleading.

1. A Few Beers, Such as Michelob Light, Are Advertised as "Light Beers" Even Though They Contain More than 100 Calories.

Although several brewers had introduced reduced calorie beers in the 1960's, those beers enjoyed only limited success in regional markets. It was not until Miller spent considerable time, effort and money to develop and market Lite that a reduced calorie beer became popular on a national basis. In 1975, after testing in several areas, Miller began national distribution of Lite. It was an immediate success, and it continues to be the leading seller among all reduced calorie brands.

Other brewers raced to share in Lite's success. They developed new brands patterned after Lite and began marketing what they called "light beers."[4/] Many brewers

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[4/] For example, during 1975, Jos. Schlitz Brewing Company introduced "Schlitz Light" beer; Blitz Weinhardt of Portland, Oregon introduced "Alta"; and Peter Hand Brewing Company introduced what it labeled "Peter Hand Extra Light." During 1976, G. Heileman Brewing Company incorporated the word "light" in the brand names of their new beers, frequently taking the name of the brewer's regular beer and simply adding the word "light." Advertising for some of these new brands adopted the term "light beer" to categorize reduced calorie beers, to distinguish them from "regular" or full-calorie beers and to trade on Miller's successful Lite brand.[5]

The following chart, based on available information from beer labels and product analysis, lists the calorie content and calorie reduction (compared to the brewer's "regular" beer) for reduced calorie beers which have been promoted as "light beers":

[Footnote continued]
introduced a reduced calorie beer promoted as "Premium Light by Heileman." Shortly thereafter, Olympia Brewing Company introduced "Olympia Gold." Anheuser-Busch introduced "Anheuser-Busch Natural Light" in 1977.

[5] Shortly after introducing its "Alta" reduced calorie brand, Blitz Weinhardt ran an advertisement which was headlined "New Alta vs. The Other Light Beer." This may have been the earliest advertisement categorizing reduced calorie beer as "light beer."

BRAND	Calories per 12 ounces	Calorie Reduction
Alta (old product)	96	1/3
Alta (new product)	60	1/2
Anheuser-Busch Natural Light	97	1/3
Brew 96	96	1/3
Coor's Light	110	2/9
Falstaff 96	96	1/3
Gablinger's (Extra Light)	96	1/3
Heileman Light	96	1/3
Hudy Delight [by Hudepohl]	96	1/3
Koch's Light	90	--
Light Lager (Erie)	96	1/3
Lite	96	1/3
Lucky 96	96	1/3
Lucky Lite	68	1/2
Mark V Light Beer	96	1/3
Michelob Light	134	1/5
Narragansett 96	96	1/3
Nine O'Five Light Beer	96	1/3
Olympia Gold	70	1/2
Pabst Extra Light	70	1/2
Pabst Light	100	1/3
Pearl Light	68	1/2
Peter Hand Extra Light	96	1/3
Players	70	1/2
Premimum Light by Heileman	90	1/3
Quittin' Time Light	68	1/2
Rainier Light	96	1/3
Rheingold Extra Light	96 [87] can	[1/3]
Schlitz Light	96	1/3
Schmidt's Light	96	1/3
Stroh's Light	115	2/9
Ultra Light	96	1/3
Utica Club Light	96	1/3

The beer that most obviously does not fit within the category of beers promoted as "light beer" is Michelob Light, which has by far the highest calorie content of any reduced calorie beer promoted as a "light beer."[6/] In fact, each of the regular beer counterparts for all the other so-called "light beers" listed above appears to contain from 140 to 150 calories. AB's most popular regular beer, Budweiser, contains about 145 calories. Thus, Michelob Light has only slightly fewer calories than AB's regular premium beer.

The higher calorie content of Michelob Light may result from the way it is produced. Michelob Light is simply watered-down Michelob. Rather than using a different brewing process -- such as brewers generally use for reduced calorie beers, and AB itself uses for its Natural Light[7/] -- we understand that AB produces Michelob Light simply by brewing a batch of regular Michelob and then diluting it with carbonated water. The water is carbonated mechanically by injection of

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[6/] The other listed brands with more than 100 calories were introduced in May and September 1978, following the launching of the Michelob Light brand.

[7/] Many brewers, including AB, achieve calorie reduction and the other desired characteristics of reduced calorie beers by the use of enzymes. AB uses malt enzymes in producing Natural Light. Miller uses another standard food enzyme for Lite. Although, in recent publications and elsewhere, AB has sought to disparage Miller's use of this food enzyme, the fact is that the same enyzme is commonly used in the production of canned fruits, ice creams, candies and bakery products. Indeed, the same enzyme is used by AB itself in connection with a number of its patented corn syrup products.

carbon dioxide. We seriously doubt that consumers are aware that the manufacture of Michelob Light consists of little more than pumping carbonated water into Michelob.

Unquestionably, Michelob Light is substantially higher in calories than any other beer which is advertised as a reduced calorie "light beer." Nevertheless, it is positioned and promoted as if it were in the same category. Not only does the term "light" appear in its name, but the labeling and advertising for Michelob Light make it evident that the word "Light" is designed to convey the impression of reduced calories. Both on labels and in advertising there are specific references to calorie content. The labeling for Michelob Light now bears the statement "contains 134 calories, approximately 20% fewer than Michelob," a phrase prescribed by BATF for reduced calorie beer labels.[8/] The television commercials for Michelob Light likewise display print-overs of calorie

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[8/] When first introduced, Michelob Light labels did not reveal the brand's calorie content. Unlike other beers advertised as "light beers", Michelob Light labels still do not disclose the brand's carbohydrate content.

content and the difference in calories between Michelob Light and Michelob. See Exhibits 1-5.

Thus, although Michelob Light has nearly as many calories as most "regular" beers, it has been masquerading as a "light beer" since its introduction by AB in February 1978. Prior to that introduction, other brewers had spent more than $80 million to establish consumer interest in and demand for reduced calorie beers. It is apparent that, in advertising Michelob Light as a "light beer" even though it has "regular" beer calories, AB has sought to ride the coattails of these expenditures and take unfair advantage of this consumer demand. Moreover, although it has watered down its beer, AB has not reduced the price. Michelob Light is generally priced at the same super-premium level as regular Michelob. We urge the Bureau to take action to halt this calculated deception.

2. The Advertising of a Beer Containing More Than 100 Calories as a "Light Beer" Is Misleading and Deceptive.

In the current market environment, the advertising of Michelob Light, and other beers with more than 100 calories, as "light beers" is misleading and deceptive in violation of the FAA Act. Sections

5(e) and (f) of the FAA Act prohibit any statement in the advertising or labeling of malt beverages which is false and misleading and which is not in conformity with BATF regulations designed to prevent "deception of the consumer" with respect to such products. 27 U.S.C § 205(e), (f). BATF regulations applicable to the advertising of beer prohibit "any statement that is false or misleading in any material particular." 27 C.F.R. § 7.54(a)(1),

Other BATF regulations prohibit malt beverage labeling which contains any statement that is false or untrue in any particular, as well as "[a]ny statement that, irrespective of falsity, directly or by ambiguity, omission, or inference . . . tends to create a misleading impression." 27 C.F.R. § 7.29(a)(1). In addition, no label may contain a brand name that conveys an erroneous impression as to any of the characteristics of the product. 27 C.F.R. § 7.23(b).

The advertising of Michelob Light violates all of these provisions. Michelob Light has attempted to take unfair advantage of the recent popularity of reduced calorie beers through misleading advertising and labeling featuring the term "light."

The use of the name "Michelob Light" and the positioning of that product as a reduced calorie beer is intended to give consumers the false impression that Michelob Light is comparable in calories and caloric reduction to other reduced calorie beers, such as Lite. However, neither its labeling nor advertising discloses that, at 134 calories per twelve-ounce serving, Michelob Light contains far more calories (about 45% more) than most other reduced calorie beers and only slightly fewer calories than regular beers, such as Budweiser.

Michelob Light technically complies with the existing requirements that it display the number of calories per twelve-ounce serving (134) and the reduction in calorie content compared to regular Michelob (20%) on the label and in advertising.[6] But this is manifestly insufficient to advise consumers that Michelob Light is almost as high in calories as most regular beers and substantially higher than any other reduced calorie beer. Michelob Light labeling and advertising gives consumers no reason to suspect that there is a substantial difference in calories between that brand and other brands promoted as "light beers." Only if consumers take the initiative to compare the labels of various so-called "light beers" would this difference become apparent. Other brewers have been powerless to correct the misleading impressions fostered by Anheuser-Busch because they are not permitted under current regulations to compare the caloric content of Michelob Light with that of their own beers. See Revenue Ruling 76-1, discussed below.

Finally, the Food and Drug Administration has recently promulgated new regulations for labeling low-calorie foods which require, among other things, that any food "that bears representations that it is low or reduced in calories" must have at least 1/3 (33-1/3%) less calories than the same food without the caloric reduction. 21 C.F.R. § 105.66(d)(1)(i), 43 Fed. Reg. 43,259 (September 22, 1978, effective July 1, 1979). Under this test, Michelob Light, which contains only 1/5 (20%) fewer calories that "regular" Michelob, and only about 8% fewer calories than Budweiser, falls far short of the mark.[9/]

In short, the advertising and promotion of Michelob Light as a reduced calorie or "light beer"

[9/] The other so-called "light" beers which have more than 100 calories likewise do not pass this test.

is misleading and deceptive in violation of the FAA Act and BATF regulations because it creates misleading impressions with respect to a material characteristic -- calorie content. Accordingly, BATF should take immediate steps to halt these unlawful practices, prohibit their recurrence and provide for correction of the misleading impressions which have been given to consumers.

3. BATF Should Issue a Regulation Specifically Prohibiting Use of Terms Such as "Light" in the Advertising of a Beer Containing More than 100 Calories.

Although the promotion of Michelob Light as a reduced calorie beer is misleading and deceptive, current BATF regulations on reduced calorie representations do not focus specifically on the use of the terms "light" and "light beer" in the promotion of such beers. There are now no specific restrictions or guidelines as to what types of beers may be promoted as a reduced calorie beer or advertised as a "light beer." New regulations specifically addressing this issue would prevent further deception such as has occurred with Michelob Light. Such regulations should specify that use of the terms "light" and "light beer" to promote a reduced or low-calorie beer is permitted only if a twelve-ounce serving of the beer contains 100 or fewer calories.

The current restrictions on calorie and carbohydrate representations in beer advertising and labeling are set out in a 1976 BATF statement, Revenue Ruling 76-1. This ruling generally prohibits, with two exceptions, "any labeling or advertising references which indicate or imply the presence of calories or carbohydrates in malt beverage products." As exceptions, the ruling permits only a truthful statement of average analysis and a truthful statement of caloric comparison between the low-calorie product and an equal volume of the brewers' regular beer, such as "96 calories -- approximately 1/3 fewer calories than our regular beer."

The intention of Revenue Ruling 76-1 was to prevent consumer deception with respect to the calorie content of malt beverages. It is obvious from the foregoing, however, that some brewers have violated the spirit, if not the letter, of the existing regulation. The amended regulation proposed by Miller would plug the loopholes in the current regulation and prevent consumer misunderstanding and deception. Specifically, consumers would be assured that beers promoted and purchased as reduced calorie "light beers" are indeed beers with significantly reduced calorie content and no more than 100 calories.

While greatly benefiting the consumer, the proposed new regulation will not involve great costs to the brewing industry. With only a few exceptions, almost all reduced calorie beers already meet the standard of 100 or fewer calories per twelve-ounce serving. A brewer whose beer does not meet the 100 calorie requirement can simply modify advertising and labeling for that beer to avoid use of the misleading term "light beer."[10/] Alternatively, the brewer could modify the beer so as to meet the 100 calorie maximum.

An alternative formulation of the amended regulation to parallel the FDA rule -- requiring that a brand advertised as a "light beer" have at least 1/3 fewer calories than the brewer's regular beer -- would, at the present time, have exactly the same effect as

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[10/] Even if BATF has approved particular labeling in the past, BATF can alter its labeling requirements for purposes of preventing consumer deception "notwithstanding loss may be caused individuals who have relied upon a different position previously taken." Continental Distilling Corp. v. Humphrey, 220 F.2d 367, 372 (D.C. Cir. 1975).

the proposed 100 calorie maximum rule. The labels on the three so-called "light beers" which currently have more than 100 calories indicate that those beers do not have as much as a 1/3 reduction in calories. All beers with 100 or fewer calories are now promoted as having at least a 1/3 reduction in calories. However, such a rule could pose substantial problems of enforcement. While the number of calories in a beer is an easily established fact, the identification of the "brewer's regular beer" might be difficult to ascertain in the case of brewers with multiple brands. For example, while AB's Michelob Light has 1/5 fewer calories than Michelob, it has almost the same number of calories as Budweiser, AB's most popular regular beer. It would even be possible for a brewer to create a new, extra-high calorie brand simply for purposes of satisfying the requirement that the beer it wishes to promote as a "light beer" has 1/3 fewer calories. In short, the 100 calorie maximum provides a bright line test which can easily be applied by brewers, regulators and consumers alike.

low-calorie beer without using "light" in the brand name. This loophole should be closed.

The same labeling and advertising requirements should apply to all malt beverage products promoted as low- or reduced-calorie beverages, whether or not the brewer chooses to include the term "light" in a product's name. This approach will best effectuate the purpose underlying the proposed regulations: preventing consumer deception by providing a uniform regulatory standard for all references by manufacturers to low-calorie malt beverage products. A simple change to the proposed regulations, which is set forth below, will effect this important change.

B. Only Malt Beverages Which Are Truly Low in Calories Should Be Allowed To Be Promoted As Low-Calorie Products.

The Bureau has found that consumers understand the term "light" to be an indication of low or reduced calories. Yet, there continue to be beers on the market, promoted as "light," with calories at about the same level as most "regular" beers. The Bureau's objective to regulate the advertising and packaging of low- or reduced-calorie malt beverages, in order to reduce the deception and confusion of consumers, could best be effectuated by restricting the type of malt beverages that may legitimately be so presented. Specifically, we propose that only those malt beverages which, per 12-ounce container, contain either (i) 100 calories or less or (ii) at least one-third fewer calories than the brewer's corresponding regular brand can properly be deemed low- or reduced-calorie products.

The soundness of this dual test is plain. Almost every malt beverage promoted as a "light" or reduced-calorie product today meets this test.*/ Accordingly, consumers have come to equate a malt beverage promoted as low in calories as one that has no more than 100 calories or which has at least one-third fewer calories than the brewer's corresponding regular beer. The one-third-fewer-calories test has been adopted by the federal Food and Drug Administration as the governing standard for various foods that are presented as low-calorie products. Plainly, this test is a generally accepted measure of a legitimate reduced-calorie product. There should be no special exemption for malt beverages from the accepted limitations, applicable to foods and beverages in general, as to the amount of calories a food product may contain and still be promoted as low in calories.

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*/ There are more than thirty products presently on the market that are promoted as low-calorie beverages. Ninety percent of them could meet this proposed test.

As we demonstrated in our prior submission to the Bureau,*/ certain brewers -- most notably Anheuser-Busch in its promotion of Michelob Light -- have exploited consumer perceptions about reduced-calorie malt beverages. A twelve-ounce container of Michelob Light contains 134 calories. This amount, which is substantially higher than the calorie content of any other low-calorie beer, is only slightly lower than the 145 calories in Budweiser, Anheuser-Busch's most popular beer, and less than one-fifth lower than the calories in regular Michelob.

The Bureau's proposed regulations -- which would merely require brewers to disclose on their labels the average analysis of their beer -- would not eliminate the public deception caused by self-proclaimed low-calorie beers that in fact are not low in calories. Both the FTC and the courts have expressly held that the truthful disclosure of actual caloric content on a product label does not cure the consumer deception resulting from a trade name or slogan that falsely represents a food product as being low in calories. Bakers Franchise Corp., 59 F.T.C. 70, 77 (1961), aff'd, 302 F.2d 258 (3d Cir. 1962) (Deception arising from use of the term "Lite Diet" bread would not be cured by a statement on label that product is "not low in calories."). See also Resort Car Rental System, Inc., 83 F.T.C. 234, 277-78 (1973), aff'd, 518 F.2d 962 (9th Cir. 1973) (Rental car company's trade name "Dollar-A-Day" would be deceptive even with disclaimer in advertising that "no vehicle may be rented for a dollar a day."). Accordingly, the notion that the disclosure of a beer's average analysis will prevent consumers from being deceived with regard to falsely represented low-calorie beers must be considered illusory.

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*/ See Miller's March 22, 1979 "Memorandum In Response to Advance Notice of Proposed Rulemaking," 8-26.

Only a product whose caloric content is substantially below that of regular beers may properly be presented to the public as a reduced-calorie product. To permit beverages which do not meet reasonable, objective standards to be promoted as low-calorie products is to permit transparent efforts to exploit consumer trust. The FAA Act prohibits such false and misleading advertising. The 100 calorie or "one-third less" limitations will ensure that only genuine low-calorie products will be so promoted.

C. The Term "Lite" Should Not Be Used In the Regulations.

In Sections 7.29a and 7.57, the terms "light" and "lite" are used interchangeably. The Miller Brewing Company is presently engaged in active litigation in the federal courts over the issue whether the use of the term "lite" by other brewers infringes on Miller's legal proprietary rights in that term, arising out of its longstanding use and extensive promotion of its "LITE" brand. By incorporating the disputed term "lite" in its regulations, the Bureau could be -- and indeed already has been -- misunderstood as taking sides in a matter where it should be neutral. We believe the Bureau can achieve its full purpose in these regulations without using the

Mr. **Hoyer**. As I understand the language, this committee has done that. You said that Congress ought to allow it if the court so orders. It is my understanding under the langauge of the prohibition that it prohibits it only to the extent that a final court order has not required it, and at that point in time funding would be available; is that correct?

Mr. **Silverglade**. That is correct.

Mr. **Hoyer**. So that part of it has been accomplished. What you are saying is that the language ought to be not carried in the bill this year because of the fact that the matter is almost resolved?

Mr. **Silverglade**. Right. We think the language should never have been in the bill in the first place. It has just about run its course now.

The history was a complete prohibition. We fear that some segments of the alcoholic beverage industry may, as a sort of an insurance policy, come back to this subcommittee asking again for the complete ban that this subcommittee entertained for a moment but then did not go with at the time, and we hope that that doesn't happen. We think that from a public health and political standpoint it shouldn't happen.

Mr. **Hoyer**. You indicate you expect an opinion from the Court of Appeals. What circuit?

Mr. **Silverglade**. D.C. Circuit.

Mr. **Hoyer**. To come down by the end of the summer?

Mr. **Silverglade**. Yes.

Mr. **Hoyer**. Is it your expectation that will not be appealed to the Supreme Court by the loser? Are you automatically assuming that the interest on the other side will be so sanguine to say, "You have won and we are not going to take the next step?"

Mr. **Silverglade**. Some companies have begun to voluntarily label their ingredients, but while the other segments of the industry that have intervened in the lawsuit have a right to appeal to the Supreme Court, the Supreme Court doesn't hear every case brought to it, and I don't think it would be interested in this case. It posed no necessarily broad law issues that the Supreme Court might be interested in.

Mr. **Hoyer**. What was the principal issue?

Mr. **Silverglade**. Well, the principal legal issue is whether the agency's rescission of the regulation is arbitrary and capricious and also whether it violated the Federal Alcoholic Administration Act. Basically, in 1980 BATF published a Federal Register notice detailing the number of people allergic, the precise cost of labeling down to six-tenths of one cent per level; they conducted a $60,000 regulatory analysis.

In 1981, BATF decided it was all a mistake and rescinded it with a one paragraph notice in the Register saying they decided that the costs outweighed the benefits and that the rule was not in accord with the President's mandate. That was found by the District Court to be arbitrary and capricious.

During that case, the government came in with briefs trying to claim that the rule was too costly and that there was no health problem, but the government lost. What happened then is BATF initially complied with the first court order and reinstated the rule for a few months in 1983 and rescinded it again, really an affront to the District Court, and claimed it had a new purpose for rescinding the regulation a second time.

What we found out was that the preamble in the Federal Register was copied verbatim from the government's brief that lost before the District Court the first time, so it was a copy-cat kind of rulemaking, and the District Court found that BATF exhibited a predetermined mindset against regulation. But I think BATF's conduct in the second round of litigation has bordered on bad faith.

Mr. HOYER. You indicate there was a Gallup Poll which indicated 61 percent support of labeling. What was the balance?

Mr. SILVERGLADE. We have that document attached to our testimony.

Mr. SKEEN. Thirty-nine percent against.

Mr. HOYER. Frankly, my reaction to the Gallup Poll was why would anybody be against labeling if they didn't have to pay for it, unless the question was posited: Would you be willing to pay a nickel a fifth or six-pack for labeling? Then you would cost——

Mr. SKEEN. That is called a political question.

Mr. HOYER. Or was the question: Do you think that labeling is necessary?

Mr. SILVERGLADE. The Gallup report question raised: Should there be a Federal regulation requiring beverage containers to list calories and ingredients? 61 percent yes, 31 percent no, 8 percent no opinion.

So it doesn't mention cost. Perhaps the people who opposed it felt there was a cost in regulation. The cost here is minimal, though.

Mr. HOYER. Well, Mr. Silverglade, let me thank you for your testimony. Mr. Skeen, do you have any questions?

Mr. SKEEN. I have no questions. That was a very interesting poll and I think the key question there was for dieters, whether they want the calories in there. I think they probably went for the calories as much.

Mr. HOYER. Thirty-one percent of the people said don't tell me how much calories because I am going to drink it anyway and I don't want to know how badly I am hurting myself.

Mr. TOBIAS. I would like Mr. Zeller to talk about calories.

Mr. ZELLER. We had a petition pending at BATF for more than three years that asks that calories be disclosed on the label of alcoholic beverages. Currently, there are light beer products on the market with more calories than some competitive regular beers. And in the absence of calorie exposure, people who would purchase the light product, thinking they are getting fewer calories, may be purchasing something worse for them from a calorie standpoint than regular beer. To clear that up, we petitioned BATF and said: Disclose calories and set a limit of 100 calories for 12 ounces for light beers.

There has been some support within the industry. BATF wanted to put a petition out for public comment as late as October last year, but the OMB apparently intervened and did not allow BATF to put out a Federal Register notice to solicit comment on the petition. There was a provision inserted, a Senate amendment to the continuing resolution last year that prohibits OMB from spending money interfering with the BATF label processes. Some believe that extends to all BATF's labeling authority, and we urge this subcommittee to make sure that OMB does not try to interfere with BATF's action to take comment.

[The following was provided for the record:]

CSPI CENTER
FOR SCIENCE
IN THE
PUBLIC INTEREST

March 21, 1986

The Honorable Edward Roybal
Chairman
House Appropriations Committee
Subcommittee on Treasury, Postal Service
  and General Government
H-164 Capitol Building
Washington, D.C. 20515

Attn: Tex Gunnels

Dear Congressman Roybal:

On behalf of our 70,000 members, we are requesting the opportunity to testify at appropriations hearings for the Bureau of Alcohol, Tobacco and Firearms, to be held by your subcommittee this spring.

The Center for Science in the Public Interest is a non-profit consumer health organization. Since 1971, CSPI has been the primary consumer organization involved in alcohol-related issues within BATF's jurisdiction. CSPI is supported solely by membership contributions, publication sales, and foundation grants.

If granted the opportunity to testify, we plan to address the following matters:

1) Ingredient Labeling of Alcoholic Beverages

Ingredients of alcoholic beverages must be disclosed so that persons who are allergic or otherwise sensitive to these ingredients can avoid consuming products whose contents can trigger life-threatening reactions. However, in the FY 1986 appropriations bill, Congress instructed BATF not to implement and enforce an ingredient labeling regulation unless required to do so by a final order of the federal court system.

On October 30, 1985, the federal district court ordered the ingredient labeling rule into effect and appellate proceedings in this case are drawing to a close. Testimony on this issue is necessary to inform the committee of the relation of pending litigation on this matter to the language now included in the appropriations bill.

2) Calorie Labeling of Alcoholic Beverages

Certain "light" beers actually contain as many or more calories than certain "regular" beers. Americans who purchase "light" alcoholic beverages under the assumption that they are

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EXECUTIVE DIRECTOR: MICHAEL F. JACOBSON, Ph.D.

buying reduced-calorie products may actually be buying higher-calorie "light" brands. A petition has been pending at BATF for more than three years that seeks to require calorie labeling on beer, wine, and distilled spirits, and to place a limit on the number of calories in "light" alcoholic beverages. BATF has announced its intention to seek public comment on this issue in its semi-annual regulatory agenda. To date, however, the agency still has not formally solicited comments and may have been blocked from doing so by the Office of Management and Budget. Testimony on this issue will provide the subcommittee with an opportunity to explore BATF's attempt to take action on an important public health issue that has been pending at the agency for more than three years.

Do not hesitate to contact us if there are any questions regarding our request to testify before your subcommittee. We look forward to hearing from you.

Sincerely,

Bruce Silverglade
Director of Legal Affairs

Mitchell Zeller
Staff Attorney

TUESDAY, APRIL 15, 1986.

NATIONAL ASSOCIATION OF PUBLIC TELEVISION

WITNESS

SALLY WELLS, WETA TV AND WETA-FM

Mr. **HOYER**. Thank you very much. We appreciate you taking the time to be with us.

Would Sally Wells and Ms. Link like to testify together?

Ms. Wells, thank you very much for being with us. We invite you to give us your presentation in however way you see fit. If you have a prepared statement, we would be pleased to include that in the record at this time.

Ms. **WELLS**. If it is all right with you, I am not going to leave mine, but I will leave two others. I will just read mine. I am going to speak to the postal subsidy for public broadcasting.

Mr. **HOYER**. You are against it?

Ms. **WELLS**. No. I love it.

First let me thank you for allowing me to testify about WETA and the importance of special postal rates to non-profit organizations such as ours. WETA is the public television and public radio station licensed in the District of Columbia serving a very wide audience not only in the District, but in Maryland and Virginia as well. In an average week, over 700,000 households tune in to WETA-TV and over 250,000 people tune in to WETA-FM.

On Channel 26, we provide a service which is not only non-commercial, but which serves the public with top-quality programming. During the day we broadcast children's programs such as Sesame Street, Mr. Rogers' Neighborhood, 3-2-1 Contact, and many other programs which have proved to be highly educational without being castor oil.

Sesame Street children of all economic strata are entering preschool and first grade with greater language and reading skills than ever before in the history of education. Our programs for both children and adults are nonviolent. In the early evenings we have provided programs for the community such as the Chemical People, which helps people at all economic and social levels in this area to deal with drug and alcohol abuse problems. And night after night we broadcast classical and modern-day dramas from Anne of Green Gables to Huckleberry Finn to Shakespeare and to the most contemporary American dramas.

We are heavy on nature and the environment and scientific documentaries which may range from the history of Albert Einstein's work to the most minute details of how the polar bear lives. And we are very strong on music of every genre.

WETA radio is primarily a station of news and information and classical music, although we also air programs of the National Press Club luncheons, jazz and folk music, Monitornews, and the very, very popular Prairie Home Companion with Garrison Keillor.

Public broadcasting provides daily news and public affairs programs. We are known for the depth with which we cover the news and are quite different than the commercial stations. We examine what happened in the Philippines, or the crisis of the Challenger shuttle, or what goes on in Nicaragua or Libya. Our hallmark is giving both sides of the picture while we require our audiences to think—we don't provide the answers.

This fall this station will present to all public TV stations a series of nine one-hour programs on sub-Saharan Africa. The host is an African, Dr. Ali Mazrui, and to my knowledge this series will be the only series ever presented on any television station in the U.S. about Africa hosted by an African.

Having said a little bit about the kinds of programs and audiences we serve, let me say that WETA receives 71 percent of its operating budget from membership contributions. We get these contributions by asking our viewers and listeners to become members of the station. At WETA the cost of becoming a full-fledged member is $20 for a year of superb programming on both radio and television.

We are proud that we make it possible for almost anyone to join. Nearly 140,000 families are members of WETA and they literally do make the programming possible for the well over one million families that receive our signals.

We sign up vast numbers of new members through the mail by a program we began over 20 years ago. Seventy-five percent of the total contributions we get from members comes in the mail; about 25 percent comes from on-air solicitations, some of which you may have seen and heard recently on our television and radio stations.

Besides using the mail to raise funds, we use the mail in a very important way to report to our members what is going on at the station and what programs are scheduled for the next month. The DIAL magazine is a publication of WETA and 13 other public stations and goes out by third class, nonprofit mail to our 140,000 members, over 1,600,000 issues annually.

It provides essential information to our viewers and listeners, and in the case of our radio station, it is the only place that the schedule can be found—the local newspapers do not publish radio schedules.

DIAL has some national ads and some local ads which help cover its costs, but I must emphasize "help" since by no means do these ads cover all the costs. But we consider this monthly communication important to our viewers and listeners and it is one of the few member benefits.

As mentioned previously, WETA's most important source of unrestricted funds is membership contributions. We receive on average another four percent from the Federal Government which is also unrestricted.

A source of restricted funding is for the national programs which we produce, the MacNeil-Lehrer Newshour, Washington Week in Review, Capitol Journal, Smithsonian World, and numerous documentaries.

On the other hand, WETA receives no local tax funds from Maryland, Virginia or D.C. In effect, this means that WETA starts at zero every single year—there is no totally reliable source of funding outside of our regular members. In fact, our members are the life blood of our stations and we would go out of business tomorrow without them. That sounds like a drastic statement, but it is very, very true.

WETA's total postage cost this fiscal year will be very high. In the past three years, our postage bill has doubled. I am sure you can imagine this is a hard blow to take. Because we are so dependent upon the mail, the increased costs worsen our ratio of dollars raised as related to costs.

WETA does all of its own mailing, this year approximately 2,500,000 pieces. We do all the work, all the planning, all the marketing—we are not using outside organizations to help us garner contributions. Therefore, we incur all the costs but we also receive all the income. And that income is turned right around and used to buy programs to service our broadcast region.

Approximately 25 percent of our regular viewers and listeners give voluntarily—we simply cannot turn off the service if they don't give, but the fact is that D.C., Maryland and Virginia residents have responded again and again and again to WETA's direct mail requests for renewals and extra contributions and new memberships. We think it is absolutely related to their satisfaction with the program service.

It is our fervent hope that the postal rates will not go up in a substantial way yet again. We fear that Gramm-Rudman will cause major cuts to other sources of public broadcasting funding.

This station has benefited from generous grants from the National Endowment for the Humanities, the National Endowment for the Arts, the National Science Foundation, and the Department of Education. And WETA's community service grants from the Corporation for Public Broadcasting are even more important to the health of the station.

If we suffer from cuts to these Federal agencies and at the same time have enormously rising postal expenses, our ability to provide even the same level of programming will be very drastically curtailed.

We believe that our programming is enriching, entertaining and highly educational. Violence does not even fit into our vocabulary. We believe that the postal subsidies are extraordinarily worthwhile in the case of public broadcasting, not only because of the quality, but also because we serve such vast numbers with a very important alternative to commercial television and radio.

We hope that they can continue because the last thing we want to do is cut back on the programs.

Thank you for giving me this opportunity.

I would like to add that we would like to pass in the testimony of Peter Fannon, the President of the National Association of Public Television Stations, and we would also submit, because Mr. Roybal—the testimony before the Postal Rate Commission hearing that was done in Los Angeles by the Representative from the L.A. station.

Mr. Hoyer. Thank you very much, Ms. Wells. We appreciate that statement.

[The statements follow:]

Testimony of

Peter M. Fannon, President

National Association of Public Television Stations

before the

Subcommittee on Treasury, Postal Service & General Government

Committee on Appropriations

U.S. House of Representatives

April 15, 1986

Summary

The nation's public television stations -- all non-profit, non-commercial operations -- are dependent on the postal service as a vital means of communication with their viewers and supporters. These stations utilize second, third, and fourth class non-profit postal rates to help fulfill their mission to provide important educational, cultural, and informational programs to the nation's homes and classrooms. Program guides, tape and printed material and fund solicitations are all sent by public television stations using the non-profit federal postal subsidy.

In the past 70 days, non-commercial stations have been faced with a 50% increase in their mail costs. If the postal subsidy is phased out entirely, as proposed in the Administration's FY1987 budget, our stations would face another 50% increase, and untold escalating increases in the years to come. If the stations' postal costs increased by another 50%, the estimated $5.6 million that they would have to commit for postal expenses would definitely result in hard choices in their individual programming schedules and educational services.

Individual contributions are vital income source

Support from individual viewers or member/subscribers is currently the fastest growing sector of public television's income. This is due in part to renewal support among loyal viewers as a reaction to past federal budget cutbacks, and in part to the stations' use of more sophisticated fundraising techniques. Between 1981 and 1984, public television's total income from subscription increased by 40%. This income now comprises the second largest share of support for public television, after state government support. Over 20% of public television's operating funds, nearly $160 million, comes from these individual contributions.

Over the last two years, public television stations reported all-time records for their recent fundraising "festivals" in terms of the total number of viewer pledges, total dollars pledged, and the value of the average contribution. These record levels have been achieved despite the reduction of on-air fundraising hours by some stations in response to viewer request.

Many of these stations are now having great success by promising viewers fewer "pledge breaks" between programs if goals attained by direct mail solicitations for new supporters are met early in the fundraising drive. What this has meant, and will continue to mean, is a growing reliance on reasonable second and third class non-profit postal rates for fundraising purposes.

Direct mail is a proven successful fundraiser for public television

While on-air fundraising is consistently recognized as the best means to attract new subscribers to individual stations, the fundraising effort seen on the air must be accompanied by consistent follow-up through the mails. In FY 1986, public television stations expect to spend an estimted $3.7 million on solicitation mail on about 46 million letters and follow-up materials mailed at the third class non-profit rates. (See attached table)

Non-commercial stations use direct mail fundraising solicitations within their own television coverage areas -- usually about a 50-mile radius. One-sixth of all the new subscribers to public television contribute in reposnse to these letters. The dramatic increases in postal rates that our member stations have swallowed in the past three years have caused problems for both small and large stations.

In non-urban areas, these rate increases do not "pay for themselves" with more successful responses. Since these stations do not mail solicitations outside their own coverage areas, they cannot increase their contributor base. Thus, cost increases usually translate into reductions of funds available for other activities.

For larger stations like WNET/New York, which last year sent out over 7.5 million pieces of direct mail fundraising letters, the unpredictibility as well as the frequency and size and recent postal increases, has hindered fundraising efforts. The lead time on their large scale mailings is considerable, and often the most important postage cost element is unknown and subject to change almost up to the date of the mailing. Another alarming side effect of the increasing cost of raising funds is the increase in the price of a station membership -- and the benefits associated with it -- at some stations. As this membership price rises, the number of contributors naturally becomes depressed. In our stations' experiences, the chances of raising other dollars -- from corporations, foundations, and governmental institutions -- are enhanced by a steady growth in the total number of members. Having to raise these prices and reduce the number of donors will bring extra diffculties to fundraising in these other areas.

Mail provides important information about public television

Crucial to fulfilling federal mandate and maintaining viewer support is the mailing of station program magazines and viewer guides. They are the primary means of keeping viewers informed, as well as meeting the requirements of the Public Broadcasting Act of 1967 to develop public awareness of and disseminate information about public telecommunications services. Public television stations mail over 49 million guides to viewers annually, at a cost in postage of about $4.3 million. Increases in second class postal rates have caused a number of stations to switch to third class mail for their monthly program information bulletins and guides. Although less expensive, third class mail is less reliable for the delivery of such time-sensitive material. The stations make a sacrifice either way -- they pay more and make adjustments elsewhere or take the lower rate and pray for timely delivery.

Our stations are heavy users of fourth class mail as well, sending virtually thousands of audio and video tapes and printed materials to schools and to other stations. Over 200 of our stations provide instructional programming to elementary and secondary schools. Around 600,000 teachers annually receive necessary schedules, teacher guides, and instructional television newsletters sent at the fourth class rate. Overall, we estimate that over four million mailings are affected by fourth class increases, adding another $3.1 million cost to our total.

Here in the Washington metropolitan area, WETA -- channel 26 public television and public radio station 90.9 -- depends heavily on the mail at non-profit rates to sustain their operations. Membership contributions account for 71% of their annual operating budget. Of these contributors, 75% are reached through the mails and 25% through on-air solicitations. WETA will reach over 145,000 member/subscribers by June of this year. Each will receive monthly copies of the DIAL magazine containing the station's television and radio program listings. WETA's costs for non-profit postage for these mailings -- program guides and solicitations -- totals over $330,000. As a station on whom the rest of our stations rely for producing programs for national distribution, any increase in WETA's fundraising costs may have an effect on their production ability.

Another heavy user of the mails is KCET/Los Angeles, a station watched by over 2.2 million families per week, and contributed to by over 200,000 viewers per year. KCET mails 2.8 million program guides per year, and another 4.5 million pieces of fundraising mail. The station estimates that their mail costs could rise by close to $400,000 if the postal subsidy were terminated. To give an idea of how this $400,000 could be put to use by the station, KCET spends $55,000 per year to provide Sesame Street to its viewers, $12,000 per month to pay for electricity for the station's transmitter, $200,000 to produce one of their award-winning public affairs programs KCET Journal, and $100,000 to purchase a year's worth of the program McNeil-Lehrer Newshour.

At KPBS/San Diego, over $121,000 is spent annually on mailing program guides, solicitations and renewal notices. A doubling of KPBS's mail costs could cost the station the same amount that each year pay for a year's worth of Sesame Street, NOVA, and McNeill-Lehrer, and all their local public affairs programming, including their yearly political candidates debate and their yearly special program "San Diego Lawmakers on the Line."

For the smaller non-commercial stations, the total postal costs may not be as great, but the effect of increasing them is just as difficult. KRWG/Las Cruces, New Mexico this year will spend less than $2,000 on program guide and fundraising mail. The station has never done any concerted, targeted direct mail campaign, but is looking into direct mail as a fundraising option to pursue in the next few years. Certainly, the price of postage over what they have already committed will be a factor in determining how the station plans to proceed.

Conclusion

Just as public television stations are beginning to bring in record levels of support from their audiences to compensate for other losses in revenue, they are having to face cuts from other sources that have a direct impact on the funds they can raise. The total system's figures are devastating enough, but taken on a station-by-station basis, what may seem like a small amount of money represents programs, personnel, and the overall excellence that each station wishes to continue.

We would ask this Subcommittee to do all in its power to recognize the widespread ill effects that the elimination of the non-profit mail subsidy would have on public television stations and their audiences. We urge the Subcommittee to appropriate funds sufficient to maintain these postage rates at least at current levels.

Thank you.

Public Television Stations
NAPTS Estimated 1986 Costs for Non-Profit Mailings

ITEM	NUMBER OF PIECES	3/9/86 POSTAGE RATE ($)	TOTAL $
Program Guides at 2nd Class,	2.16 million subscribers x 12 issues/year = 25.9 million mailings	av. rate $.095	$2,460,500
Program Guides at 3rd Class,	1.94 million subscribers x 12 issues/year = 23.3 million mailings	av. rate $.08	$1,864,000
Fund Raising Letters & Follow-Ups at Bulk, Non-Profit	46.4 million mailings	av. rate $.08	$3,712,000
Teacher Guides, Tapes and other materials at 4th Class rates	4.3 million pieces	av. rate $.74	$3,182,000
TOTAL	99.9 million pieces		$11,218,500

KCET

Testimony

Timothy B. Conroy
KCET Vice President Development

Postal Rate Commission Hearing
March 24, 1986

I want to thank the Postal Rate Commission for this opportunity to provide testimony regarding our concern about further postal rate increases for non-profit mail.

I represent KCET, Community Supported Television for Central and Southern California.

KCET is one of the leading public television stations in the nation in program production, broadcasting, viewership and the support of individuals and families who rely on us for the telecast of over 7,000 hours of educationally and culturally enriching public television programs each year.

As a producer, KCET is known throughout the nation and the world for the production of innovative and significant television programs such as the series COSMOS which explored our universe with famed scientist and author Dr. Carl Sagan.

PUBLIC TELEVISION FOR SOUTHERN AND CENTRAL CALIFORNIA
4401 SUNSET BOULEVARD
LOS ANGELES, CALIFORNIA 90027
PHONE 213 666-6500
TWX 910-321-4396

Postal Rate Commission Hearing continued....

As a broadcaster, KCET presents a program schedule watched by over **2,200,000 families every week!** Children learn and parents don't fear exposure to violence when they tune in to see Big Bird walk down **SESAME STREET** every day. Concerned citizens stay well informed watching **THE MACNEIL LEHRER NEWSHOUR.** Young and old adventurers alike discover a world filled with wonder and delight when they journey with us through our **NATIONAL GEOGRAPHIC SPECIALS.**

KCET productions and programs are accessible to all who live in our community. We caption our programs for the hearing impaired. We specifically deal with subjects of vital interest to minority groups. We present programs that appeal as much to the taxi driver who loves opera as to the business person concerned with the rise and fall of the Dow Jones Industrials. Research just completed by KCET shows that virtually every demographic group in our community shares KCET.

These are just some of the productions, programs and services that have caused over **280,000 people to voluntarily contribute financial support to keep our station on the air**.

KCET is **watched**, **supported**, and, yes, **loved** by an enormous number of people. And KCET **relies on these people for its very existence and survival**.

Over **two thirds** of our annual operating budget comes directly from the voluntary contributions of viewers who become annual subscribers to our station. And contrary to what many believe, we receive less than 7% of our unrestricted support from federal grants and nothing from the state of California.

Now that I've provided a little background about KCET, I want to address the devastating effect of continued postal rate increases on our ability to continue our television programming services.

KCET utilizes non-profit postal rates to ask for financial support, provide services and communicate with people who watch our programs. **Over 65 % of all of KCET's financial support budgeted for this year from these people is produced from non-profit mailings**.

On an annual basis KCET sends 4,500,000 letters to solicit new, continued and additional contributions from prospective subscribers and current subscribers, and to thank them for their support. KCET sends 2,800,000 DIAL magazines throughout the year to inform our subscribers about our television programs, community outreach and educational services.

Postal Rate Commission Hearing continued....

Our direct mail activities are virtually our financial lifeline, and our primary means of communicating with our subscribers about the programs their contributions support.

However, two already enacted postal rate increases, and the possibility of **further postal rate increases** threaten to have a serious, negative impact on KCET's already tight budget.

By our calculations, on an annual basis, KCET may have to absorb costs of at least $377,000. An increase of 116% over rates in effect just three short months ago.

When you compare this estimated cost increase of $377,000 to the costs of some of our programs and services a quick assessment can be made of the hard choices ahead if further rate increases take effect.

- **52 weeks of SESAME STREET costs KCET over $55,000 every year.**
- **A month's electrical power to operate our transmitter costs $12,000.**
- **One of our award-winning KCET JOURNALS costs some $200,000.**
- **A year's worth of MACNEIL LEHRER costs KCET over $100,000.**
- 22 GREAT PERFORMANCES costs KCET over $35,000 every year.

It is our hope that we can absorb the increased costs **already in effect** without major reduction of service in our critical areas of activity. **Any further cost increases to non-profit mail rates** will severely impact on our ability to fulfill our public responsibility effectively. And imposing commercial bulk rates would be devastating.

Thank you for hearing my testimony and I hope you will ask me questions. I will do my best to answer them.

TUESDAY, APRIL 15, 1986.

CHILDREN'S TELEVISION WORKSHOP

WITNESS

NINA B. LINK, VICE PRESIDENT OF THE MAGAZINE GROUP, CHILDREN'S TELEVISION WORKSHOP, AND PUBLISHER OF SESAME STREET, ELECTRIC COMPANY, AND 3-2-1 CONTACT MAGAZINES

Mr. HOYER. Ms. Link of the Children's Television Workshop.

Mr. LINK. My name is Nina Link. I am Vice President of the Magazine Group at Children's Television Workshop and Publisher of Sesame Street, Electric Company, and 3-2-1 Contact magazines.

Children's Television Workshop is a 501(c)(3) nonprofit organization dedicated to production of high-quality educational television programs for our nation's children and their parents. Our magazines are designed to promote literacy, to provide parents, children and teachers with additional support material related to our TV programs, and also our magazine group is to contribute necessary revenue to help produce those programs.

We sincerely hope that nonprofit postal rates can be maintained at sufficiently low levels by means of adequate revenue forgone appropriations to permit us to accomplish our objectives of education and support. The two increases this year have already hurt us badly and further increases would bring our mission to a halt.

Our circulation numbers more than two million households a month with a readership of over six million children and adults.

Sesame Street Magazine, our oldest, is for children aged two to six and provides pre-reading, pre-math, pre-science, socialization and effective curricula to help children prepare for school and begin to explore the world around them. It includes a parents' guide which we began in September to bring timely and useful information about parenting.

The Electric Company Magazine reaches children six to eleven and provides stories, puzzles, games and poems to motivate children to read and to reinforce many of the skills they are learning at school.

3-2-1 Contact Magazine was created for children aged 8 to 14 to expose them to the exciting world of science and technology, prepare them for the ever changing world around them and to involve them in activities which teach and reinforce science principles appropriate to their age.

We found out last week that 3-2-1 Contact is a finalist in the National Magazine Awards, the first children's magazine to be a finalist in the category of general excellence. We are hoping to win and the award ceremony will be at the end of April.

The readers of all three magazines actively voice their approval by sending in stacks of mail with appreciative comments. For example, the parent of a Sesame Street subscriber wrote:

"Thank you for the many hours of fun that your magazine has given us. We are looking forward to many more learning experiences using our imaginations and the guidance your magazine provides."

Another parent wrote:

"I have just bought Sesame Street Magazine for the first time for my son . . . What a wonderful magazine! I am especially happy it is not the kind of magazine that is read from cover to cover then tossed out. Instead it is a magazine he can look at over and over and learn more and more as he gets older."

From a young Electric Company reader:

"I really enjoy reading the Electric Company Magazine and working all the fun games. I thought I should tell you how much fun it is to relax and sit down to read my Electric Company Magazine because it gives me something to do instead of watching TV all the time."

A parent wrote:

"Saying goodbye to Electric Company Magazine is like saying goodbye to an old friend. My daughter's reading greatly improved when she was about seven. We have enjoyed the riddles, games and stories. Thank you for your excellent magazines. Thank you for all the memories and smiles."

Our 3-2-1 Contact readers are particularly emotional about the magazine:

"I love your magazine. Every time I get it I learn more and more. I never thought a magazine could be full of this much stuff. It keeps me busy for hours. When I start to read it I can't put it down."

I think my favorite letter was from a young man who wrote, "I want to tell you how much I like your magazine. I have only gotten seven issues, but I think it is fantastic. It is not just me that likes it, it is the whole family. In fact, I want my birthday cake to say 3-2-1 Contact. Keep up the good work.

Since our magazines receive no government or corporate funding, our primary source of revenue comes from subscriptions. Up until now our subscription and newsstand rates have been competitive with other children's magazines. But we will be fighting a losing battle if we have to increase our rates much further, to offset the losses from postal rate increases. In-depth testing has shown that further increases will sharply reduce our subscription base. That, in turn, will reduce our revenues and our ability to put out the high quality magazines that millions of parents have come to expect and rely on for their children.

Here are the facts about postage costs for the three CTW magazines. Until January 1986, our annual postal bill under Step 14's second and third class nonprofit rates would have been $2,407,000. The move to Step 16 in January 1986 increased our annual postal bill 22.4 percent to $2,945,000, a jump of $538,000. The impact of the March 9, 1986 increase will bring our annualized postal bill up to $3,227,500, an increase of another $282,000.

How will we make up for this enormous loss of $820,000—in the past 90 days—the difference between Step 14 and our present postal rates? What would happen if there were no subsidy for nonprofit organizations and our postal bill suddenly skyrocketed to $4,019,000? Here's what would happen. Sesame Street Magazine, the Electric Company Magazine, and 3-2-1 Contact Magazine would be in immediate jeopardy.

As many of you may know, our television programs on public television carry no advertising. We have always been very careful not to violate the confidence that America's mothers and teachers have placed in us, our television programs and our magazines. However, just six months ago, after a long and painful period of study, we began accepting selected types of appropriate advertising in our magazines. Rising postal costs gave us no alternative.

By no means does this advertising cover our magazines' costs; but the additional revenue does make it possible for us to continue publishing and mailing them. That may not be the case if there are substantial postal increases again in the coming year.

Use of the nonprofit rates has made it possible for us to provide magazines of extremely high quality, with important educational value. We hope that you will allow us to continue to do so by appropriating sufficient revenue forgone funds.

Thank you.

Mr. **Hoyer**. Thank you very much, Ms. Link. We appreciate your testimony.

I might say that this subcommittee as you both probably know as well as the Congress itself has been at the forefront of rejecting proposals to zero fund or very substantially reduce the revenue forgone payment to the Postal Service that the Congress regularly has made. The President once again, as you know, has proposed reducing that substantially.

I am hopeful that the Congress will heed the comments of you both.

I would like to introduce particularly Ms. Wells to you Frank Wolf from suburban Virginia who is also a consumer of WETA's work. We want to thank you both.

I don't have any questions.

Mr. **Wolf**. Thank you, Mr. Chairman.

Just a brief question. Why won't the newspapers carry radio?

Ms. **Wells**. We don't know. The New York Times carries radio programs very well and The Post has never done it. We only have one paper in the sense of a big operation and they simply won't do it.

So if you want to listen to specific programs on radio in this market, you have got to have a source like WETA's DIAL, unless you call us and that is out of the question for hundreds of people to be calling every minute to find out what is on.

It is amazing because occasionally we have to cut down on the space we have in the DIAL and often the detail on the radio programs of what is going to be on gets cut down and we always get phone calls.

Mr. **Wolf**. You have asked them to carry that?

Ms. **Wells**. Yes. It certainly would be wonderful if they did.

Mr. **Wolf**. I am very impressed with your programs, Ms. Wells.

I have no further questions, Mr. Chairman.

Mr. **Hoyer**. Thank you both. We appreciate you taking the time to come here.

TUESDAY, APRIL 15, 1986.

NATIONAL FEDERATION OF THE BLIND

WITNESS

JAMES GASHEL, NATIONAL FEDERATION OF THE BLIND

Mr. HOYER. Now Mr. James Gashel who represents the National Federation of the Blind.

Mr. Gashel, we are very pleased that you are here with us. Please proceed.

Mr. GASHEL. Thank you very much.

Mr. HOYER. We appreciate it.

Congressman Wolf from Virginia to your left and myself are pleased to have you with us and look forward to hearing your testimony.

Mr. GASHEL. Thank you very much, Mr. Chairman.

I have submitted for the record a written statement and it is a combined statement dealing with two agencies, the U.S. Postal Service revenue forgone matter and the Committee for Purchase from the Blind and other severely handicapped.

Mr. HOYER. Without objection, we will insert your entire statement at this point in time in the record and you can proceed to emphasize as you see fit.

Mr. GASHEL. Thank you very much.

With respect to the issue on revenue forgone, it is obviously an important concern of the blind of this country as well as the other speakers that you have heard here this afternoon.

I am just going to say that we, too, have suffered the same kinds of postage rate increases. Obviously we hope that the 1987 bill will retain the language that requires the Postal Service to continue the free matter service for the blind and physically handicapped having to do with books and library materials, but in addition, we must have an adequate appropriation to continue our public education and fund appeal campaigns.

In our mind that means that our postage rates should be held to the Step 16 level, which would be for the mailings of the National Federation of the Blind, for example, 7.4 cents per piece.

As of today's rate, we are paying 8.5 cents per piece which translates into dollarwise we are paying about $140,000 a year more for our mailings than we actually should be under the Step 16 rate and that is due to a shortfall in appropriations or an alleged shortfall as a result of the 1986 appropriations.

We hope the committee will remedy that this year by appropriating the full amount of $833 million which would maintain the Step 16 level.

Now, what I would like to do is turn to a discussion of the appropriations matters pertaining to the Committee for Purchase from the Blind and Other Severely Handicapped.

In general terms, we are concerned that the blind and other severely handicapped workers under the committee's program do not actually receive a fair share of the proceeds derived from their labors in this program.

Here is an example of why we feel this way. The figures that I am going to present in chart form are from a recent annual report of one sheltered workshop in the program, the State of Connecticut Board of Education Services for the Blind Sheltered Workshop.

At the Connecticut workshop, the average pay of blind individuals, the first chart will show that the average pay of blind individuals at that workshop is $1.86 per hour while sighted people in the same workshop, their pay average is $4.20 per hour.

Ninety-three percent of the direct labor workers in the sheltered workship in Connecticut, and this is a typical example, are blind or severely handicapped and those are people who pay average is $1.86 an hour.

As far as management and supervisory positions, where you see the long line going to the top of the chart, that represents sighted people who work in management and supervisory positions whose pay average is $8.25 per hour as opposed to the average pay for blind and handicapped managers or supervisors whose pay averages $5.54 per hour.

So in both categories the labor and the management side of that chart you have a tremendous pay differential going on here.

As far as the other chart is concerned looking at the workshops work force as a whole and comparing that with pay, 78 percent of all the employees of the Connecticut workshop are blind or severely handicapped. However, that particular group receives only 36 percent of the pay and fringe benefits of that workshop.

Conversely, only 22.41 percent of the work force at that workshop is a sighted work force and they receive about 65 percent of the pay and fringe benefits.

So in essence, the conclusion is that job status and pay under the Javits-Wagner-O'Day program are vastly improved if you are working in a workshop and you are sighted as opposed to being blind.

Top pay, $8.25 an hour, goes to the sighted, bottom pay goes to the blind.

In 1983, a report released by the United States House of Representatives Committee on Government Operations said that the Committee for Purchase from the Blind and Other Severely Handicapped was really going to be directed to make certain improvements in its ad of the Javits-Wagner-O'Day program to correct the kind of imbalances that I am talking about here.

We are not aware that any but the most simple or technical improvements have been made in the committee's program. It is true that the committee meetings which were formerly closed before 1983 are now open, but that does not mean there has been any significant change of policy along the lines signaled by the report.

As a further attachment to my statement, I am also submitting for the record a copy of last year's report language from the appropriations report in the Senate, Senate Report 99133, the report to accompany the Treasury, Postal Service and General Government Appropriations Act for fiscal year 1986.

This illustrates that the relevant committees in both bodies have expressed very serious reservations about the Administration of the Javits-Wagner-O'Day program by the Committee for the Purchase from the Blind and Other Severely Handicapped.

Of particular note in last year's Senate report is the requirement that the committee must justify its annual appropriations request by submitting specific data in sufficient detail to make possible a comparison of employment opportunities, pay and benefits which the Committee for Purchase from the Blind and Other Severely Handicapped Program provides to blind individuals, to other severely handicapped individuals, and to persons who are neither blind nor severely handicapped.

We recommend something like that along the lines for the bill this year, but we would say this, that it is very clear from the committee submission so far to the Congress that there has not been compliance with the instructions provided in that Senate report.

According to the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped, the OMB has declined to approve amendments to the committee's annual report and certification forms that must be submitted by each of the sheltered workshops.

This suggests that if Congress wants to obtain better data to compare employment opportunities, pay and fringe benefits, there is going to have to be specific directives which come in the form of statutory language to require these types of information to be collected.

So therefore we are recommending appropriate bill language to appear in the 1987 appropriations bill. It is particularly timely that Congress should actually act to strengthen the committee's reporting system since OMB's approval of the current annual report forms expires at the end of 1986. So this would be the year to install some new reports.

It is acknowledged that the appropriations committee may not have sufficient jurisdiction to alter in any significant way matters pertaining to the eligibility criteria for sheltered workshops that participate in this program since that criteria is stated in the underlying statute, but the Javits-Wagner-O'Day program could however be changed in measurable ways by some activities that would fall within this committee's jurisdiction.

For example, the Committee for Purchase from the Blind and Other Severely Handicapped could be directed to administer the program through the designation of central nonprofit agencies, which it now does, but could be directed to do it in an improved manner so that it actually designates central nonprofit agencies that truly have affirmative employment programs for employment of blind and severely handicapped persons.

So what we are asking is that the committee give guidance to the Committee for Purchase from the Blind and Other Severely Handicapped in its designation of appropriate central nonprofit agencies that participate in the administration of this program and in doing so would not offend the underlying statutory language.

We believe that the central nonprofit agencies, National Industries for the Blind and National Industries for the Handicapped should be model employers of blind and handicapped persons, but in last year's Senate appropriations subcommittee hearing, the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped was unable to provide any information about employment opportunities, pay or fringe benefits for the blind and other severely handicapped at the central nonprofit agencies yet we know from collecting other data that out of a work force of some 90 individuals employed by national industries for the blind to help administer the program only four people are blind and none have positions of any responsibility.

This is what the House of Representatives Government Operations Committee was talking about when it referred to tokenism in underemployment and low pay of blind persons involved in management and supervisory positions in this program.

Thank you, Mr. Chairman.

[The statement of Mr. Gashel follows:]

BEFORE THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE,
AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
TESTIMONY OF THE NATIONAL FEDERATION OF THE BLIND
WASHINGTON, D.C.
APRIL 15, 1986

Mr. Chairman, my name is James Gashel. I am appearing in this hearing on behalf of the National Federation of the Blind. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone: (301) 659-9314. I appreciate very much the opportunity you have extended to me to appear before the Subcommittee today.

In the National Federation of the Blind, we represent the blind consumer. We are the blind, more than 50,000 strong. There are state affiliates of the National Federation of the Blind in all states and the District of Columbia. We also have local chapters in most sizeable population areas in the United States. Thus, wherever you go in this country, the blind (through the National Federation of the Blind) have an active, collective voice.

With that bit of background, Mr. Chairman, I will now turn directly to a discussion of the principle concerns we have relating to the 1987 Treasury, Postal Service, and General Government Appropriations bill. First, I will urge that appropriations be continued to the United States Postal Service to cover "revenue forgone" on free and reduced rate mail service. Following those remarks, the balance of my statement will address issues pertaining to the program of employment for blind and handicapped persons in sheltered workshops conducted by the Committee for Purchase From the Blind and Other Severely Handicapped.

Postal Service Appropriations for Revenue Forgone

The revenue forgone appropriation to the United States Postal Service (USPS) continues to be a vital concern to many nonprofit organizations, including the National Federation of the Blind. The current appropriation (post Gramm-Rudman cuts) is $716 million. For the National Federation of the Blind, this translates into a third class nonprofit required five digit presort postage rate of 8.5 cents per piece. Less than a year and a half ago the same rate was 5.2 cents per piece.

Now, we are not just talking about pennies when we talk about these increases in postage rates. The postage bill we will pay this year (calendar year 1986) will be approximately $400,000.00 higher than it was for the National Federation of the Blind to mail the same amount of material to the public during calendar year 1984. That means that about $400,000.00 less will be devoted to our direct service programs conducted to help the blind. Instead, we will be paying that amount and more to USPS this year. These drastic increases in our postage costs could be moderated somewhat if Congress provides full funding of $833 million for revenue forgone during fiscal year 1987.

Under the Postal Reorganization Act (as recently amended by the Consolidated Ominbus Budget Reconciliation Act of 1985), all preferred-rate mailers must now pay the full, attributable costs of their mailings. The rate is supposed to be step 16 on the phasing schedule. However, the rate we are actually paying is above the published rate for step 16. It is currently a matter of legal contention whether the Postal Service has the authority to charge preferred-rate mailers any amount above the step 16 postage rate. However, until the courts decide the question (or Congress provides adequate appropriations) we're being forced to pay the higher amount. In the case of the National Federation of the Blind (if we were required to pay the step 16 rate and no higher), our postage bill for this year would be reduced by about $140,000.00. That's how much the excess charge is costing us this year due to a shortfall in appropriations. So for next year, we are urging Congress to appropriate the full amount in order that our postage rate may be held to step 16 and no higher. The fact sheet I have attached to this statement describes in more detail how essential it is for organizations such as ours that help the blind to continue to have access to a subsidized postage rate. I hope you will consider these facts and my other comments as you address the question of the appropriations amount for revenue forgone. Full funding is truly essential.

Committee for Purchase From the Blind and Other Severely Handicapped

The Committee for Purchase From the Blind and Other Severely Handicapped is requesting an appropriation of $778,000.00 for fiscal year 1987. The Committee's responsibilities are to support and administer a program of employment opportunities for the blind and other severely handicapped in sheltered workshops. Under the Committee's program, goods and services valued at just under $300 million this year alone will be provided to the Federal government. The workforce organized to produce these products and services for the government is composed of approximately 15,000 blind and other severely handicapped employees.

In general, Mr. Chairman, we are concerned that the blind and other severely handicapped workers under the Committee's program do not receive a fair share of the proceeds derived from their labors. Here is an example to make my point. The figures I have come from recent annual operating reports of the sheltered workshop operated by the State of Connecticut Board of Education and Services for the Blind. This is not an isolated example, it is typical. The information shows that blind direct labor workers at the Connecticut workshop average $1.86 per hour, while sighted direct labor workers average $4.20 per hour. Ninety-three percent of the direct labor workers are blind, handicapped, or blind and handicapped. The average pay for these individuals is $2.04 per hour.

Now as far as management and supervision are concerned, only 35% of the employees in that category are blind or handicapped. Twenty out of 31 are sighted without handicaps. The pay for these 20 individuals averages $8.25 per hour as compared to pay for blind managers (including those with handicaps) which averages $5.54. In the workshop's workforce as a whole, 78% of all employees are blind or handicapped. But these individuals only receive 36% of the pay. On the other side of the ledger, the sighted who are not handicapped represent only 22.41% of the workforce, but they receive almost 65% of the pay.

The most glaring conclusion you can draw is that job status and pay are vastly improved if the employee of a workshop is sighted as opposed to blind. Most blind people work in direct labor jobs. The sighted supervise or manage. Top pay ($8.25 an hour) goes to the sighted. Bottom pay ($1.86 per hour) goes to the blind. That's what the figures show.

In a 1983 report released by the United States House of Representatives, Committee on Government Operations, the Committee for Purchase From the Blind and Other Severely Handicapped was directed to make certain improvements in its administration of the Javits-Wagner-O'Day program. (See 17th Report of the Committee on Government Operations, U.S. House of Representatives, 98th Congress, First Session, H. Rept. 98-546) Mr. Chairman, we are unaware that any but the most simple and technical improvements have been made. It is true that the Committee meetings (formerly closed) are now open. But the real change of direction signaled by the Government Operations' Committee Report has simply not occurred. Work opportunities for blind people in this program are still limited to low pay labor jobs, often with pay below the Federal minimum wage. Rarely do we find blind people in the management or supervisory positions where pay and responsibilities are better. These existing conditions fly in the face of the Government Operations Committee's Report and recommendations.

As a further attachment to my statement, I am submitting for the record a copy of last year's Report language which appeared in S. Rept. 99-133, the Report to accompany the bill making Treasury, Postal Service, and General Government appropriations for fiscal year 1986. This illustrates that relevant committees in both the House of Representatives and the Senate have expressed serious reservations about the administration of this program by the Committee for Purchase From the Blind and Other Severely Handicapped.

Of particular note in last year's Senate Report is the requirement that the Committee must justify its appropriations request by submitting: "Specific data in sufficient detail to make possible a comparison of employment opportunities, pay, and benefits which the CPBOSH program provides to (1) blind individuals, (2) other severely handicapped individuals, and (3) other individuals who are neither blind nor severely handicapped." These directives made in last year's Senate Report were an important first step toward the improvement of employment opportunities for blind and other severely handicapped individuals in the Javits-Wagner-O'Day program. However, the reporting has not occurred to the extent required by the Senate Report or in the spirit of that Report.

According to the executive director of the Committee for Purchase From the Blind and Other Severely Handicapped, the Office of Management and Budget has declined to approve amendments to the Committee's annual report and certification forms submitted by all eligible sheltered workshops. This suggests that if Congress wants to obtain better data to compare employment opportunities for the blind with those provided to the sighted, specific directives in the form of statutory language will have to be provided. Therefore, the appropriate proposed language for the 1987 appropriations bill is attached. It is particularly timely for Congress to act in strengthening the Committee's reporting system, since OMB's approval of the current annual workshop certification forms expires December 31, 1986. Straightforward reporting on employment opportunities and pay in the sheltered workshops and Central Nonprofit Agencies is only the beginning step for Congress to direct. Beyond that, it is essential that actual improvements in employment opportunities and pay for the blind and other severely handicapped must be ordered.

It is acknowledged that the Appropriations Committee may not have sufficient jurisdiction to alter in any significant way the eligibility criteria for sheltered workshops, since that criteria is set out in the underlying statute--the Javits-Wagner-O'Day Act. However, the Appropriations Committee may properly provide directives to the Committee for Purchase From the Blind and Other Severely Handicapped regarding criteria for the designation of Central Nonprofit Agencies involved in the administration of the Committee's program. Such guidance (as proposed in the attached statutory language) does not amend the underlying statute.

We believe that the Central Nonprofit Agencies (National Industries for the Blind and National Industries for the Severely Handicapped) should actually be model employers of blind and other severely handicapped persons. But, in last year's appropriations hearing before your counterpart Subcommittee in the Senate, the executive director of the Committee for Purchase From the Blind and Other Severely Handicapped was unable to provide any information concerning employment opportunities and pay for the blind and other severely handicapped at the Central Nonprofit Agencies. Yet the latest information we have shows that, for example, out of a workforce of some 90 employees at National Industries for the Blind (NIB), only 4 are actually blind. And none of the employees who are blind at NIB occupy responsible, managerial positions.

This is what the House of Representatives, Government Operations Committee was referring to as "tokenism" when it discussed the underemployment of blind and severely handicapped persons in management and supervisory positions in sheltered workshops and the Central Nonprofit Agencies. From the facts we have at hand, it is clear to us that steps are not being taken to correct that condition. Congress must act, therefore, to provide a statutory basis for greater efforts by the Central Nonprofit Agencies to employ blind and other severely handicapped personnel. The statutory language I am offering includes such requirements.

Mr. Chairman, in concluding this statement I want to commend you and to express our strong appreciation to you for the interest and concern you obviously have in the issues of underemployment and low pay for blind and severely handicapped workers in the sheltered workshops and the Central Nonprofit Agencies that operate under the Javits-Wagner-O'Day Act. The appropriations amendments we are offering are designed to do what the Appropriations Committee can do within its limited jurisdiction. I trust that you will find this to be the case and you and your colleagues will therefore vote to include specific statutory language of the type we are suggesting. Toward that end, I pledge our fullest continuing cooperation, and I thank you.

For further information contact:
James Gashel
Director of Governmental Affairs
National Federation of the Blind
1800 Johnson Street
Baltimore, Maryland 21230
(301) 659-9314

FACT SHEET

CRISIS IN NONPROFIT MAIL RATES MEANS SERIOUS HARM TO THE BLIND

The Issue: During this session, Congress will decide whether federal funds will continue aiding the blind and others by meeting some of the costs for free and reduced rate mailings carried by the United States Postal Service (USPS). Many nonprofit organizations, such as the National Federation of the Blind (NFB) may not survive if forced to pay commercial postage rates. Yet, this would be the effect of budget proposals to terminate or reduce federal aid for nonprofit groups to use the mails.

Nonprofit Postage Rates Bring Help to the Blind: Holding the line on nonprofit postage rates will mean the difference between life or death for groups such as NFB which operate in the private sector. Voluntary initiatives made by the blind themselves without government expense (such as public education campaigns and drives for more employment opportunities for the blind) will decline or cease altogether if postage rates rise further. Materials and resources aimed at personal adjustment and self-help for the blind, provided without government cost, will not be available. Organized consultation by the blind themselves to assist in developing technology or to advise officials of public programs will not be possible. Communication links among the blind to share information, knowledge, and resources will be gone. Above all, the ability to encourage the blind toward self-betterment, growth, and productive living will be lost. This is tangible help made possible now because of federally provided special mail rates. The rates allow for educational communications and fundraising to enlist community, private sector support for the efforts of the blind to help themselves. NFB's programs help reduce dependency upon the government by the blind. That in itself is a benefit to all taxpayers. But if Congress decides not to use tax money to encourage these private initiatives, demand will rise from among the blind for more help from public agencies financed by state and federal tax dollars. Costs to the federal treasury for publicly run programs will rise while private efforts cease or suffer.

How Congress Can Help:

(1) Vote for a budget resolution containing sufficient authority for appropriations to maintain nonprofit postage rates at current levels.

(2) Vote for appropriations measures which provide sufficient funds so nonprofit postage rates will not increase further during 1986 or 1987. The FY 1986 appropriation is $748 million. $833 million may be needed for FY 1987, but the amount may be lower depending upon the outcome of budget reconciliation legislation and recommendations being studied by the Postal Rate Commission.

Current Crisis and Background: Under the 1970 Postal Reorganization Act federal revenues pay for mail service authorized by law at free or reduced rates. Communications by nonprofit organizations and "free matter for the blind and handicapped" directly benefit the blind. Political parties, newspaper and periodical publishers, schools, libraries, among others are also aided by the appropriation known technically as "revenue forgone."

This is a target in the current round of budget cuts. In 1981, 1982, and 1985, there were unsuccessful attempts to eliminate budget authority for the revenue foregone appropriation, but Congress wisely resisted. Again this year the President's budget has requested complete elimination of revenue foregone payments to USPS. Under that budget, no funds would be available to mail books for the blind postage free or to support use of the mails on behalf of the blind by NFB and other nonprofit groups.

8.7 cents per piece is the current third-class nonprofit rate. At the beginning at 1985 the comparable rate was 5.2 cents per piece. If the budget plan wins out to eliminate the revenue foregone payment, the third-class nonprofit postage rate would be increased to the commerical rate, and for the first time books for the blind would have to be sent at prohibitively expensive commercial postage rates. 12.5 cents per piece is the commercial third-class rate. This would be the amount charged to nonprofit organizations without adequate appropriations to meet the difference. At the 12.5 cent third-class per piece rate, an organization mailing one million pieces would pay $125,000, as opposed to $87,000 for a similar mailing presently. If a nonprofit group mails ten million pieces annually (many do), a postage rate increase of one cent will result in an increased postage charge of $100,000 for that group. That increase may mean the difference between continuing to provide help or closing down altogether because postage costs are too high.

Paying more to USPS for postage takes money directly from program services which now help the blind. It would also be impossible to contact new potential contributors to raise additional revenues. If communications with blind persons and the public at large are cut, a time bomb is created, since fewer people will understand anything about blindness and even fewer will know of the continuing need to help. The inevitable result is a downward spiral, with fewer people helped and fewer people helping. Soon the self-help organizations of the blind will be destroyed. These are the unanticipated ripple effects of rising postal rates, but they are nonetheless very real. The ability to communicate at an affordable cost is vital. Without it, many worthy efforts on behalf of the nation's blind will diminish or die altogether. Since fifty thousand Americans become blind each year, there must either be continued widespread mailings to the general public to inform them about blindness and how to deal with it or else an increasing number of the newly blinded will not be found until it is too late and they are hopelessly doomed to continuing dependence.

Calendar No. 283

99TH CONGRESS } SENATE { REPORT
1st Session } { 99–133

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION BILL, 1986

SEPTEMBER 9, 1985.—Ordered to be printed

Mr. ABDNOR, from the Committee on Appropriations,
submitted the following

REPORT

[To accompany H.R 3036]

The Committee on Appropriations, to which was referred the bill (H.R. 3036) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies for the fiscal year ending September 30, 1986, and for other purposes, reports to the Senate with various amendments, and presents herewith information relative to the changes recommended.

Amount of bill as passed by House	$13,237,868,125
Amount of decrease by Senate	−237,567,125
Amount of bill as reported to the Senate	12,990,301,000
Amount of estimate	12,211,347,000
The bill as reported to the Senate:	
Below the appropriations provided in 1985	−85,227,000
Over the estimates for 1986	+778,954,000
Below the House bill	−237,567,125

ADVISORY COMMITTEE ON FEDERAL PAY

1985 appropriation to date	$220,000
1986 budget estimate	222,000
House allowance	219,000
Committee recommendation	210,000

The Committee recommends an appropriation of $210,000 for the Advisory Committee on Federal Pay.

The Committee was appointed in accordance with the Federal Pay Comparability Act of 1970. The Committee assists the President in carrying out the policy of comparability in pay between major Federal statutory pay systems and private enterprise. The Committee reviews the annual report of the President's pay agent and considers the recommendations of representatives of Federal employees and other officials of the Federal Government. The Committee then prepares for the President an independent report with its findings and recommendations.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

1985 appropriation to date	$710,000
1986 budget estimate	749,000
House allowance	730,000
Committee recommendation	730,000

The Committee recommends the full budget request of $730,000 for the Committee for Purchase From the Blind and Other Severely Handicapped.

The Committee's primary objective is to increase the employment opportunities for the blind and other severely handicapped and, whenever possible, to prepare them to engage in normal competitive employment. The Committee determines which commodities and services are suitable for Government procurement from qualified nonprofit agencies serving the blind and other severely handicapped; publishes a procurement list of such commodities and services; determines the fair market price for commodities and services on the procurement list; and makes rules and regulations necessary to carry out the purposes of the act.

The Committee staff supervises the selection and assignment of new commodities and services, assists in establishing prices, reviews and adjusts these prices, verifies the qualifications of workshops, and monitors their performance.

REPORTS FROM THE COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

The Committee is concerned over reports that the Committee for Purchase from the Blind and Other Severely Handicapped [CPBOSH] may be failing to provide adequately for expanding employment opportunities for blind and severely handicapped individuals. Particularly, there is evidence that blind and severely handicapped people are not recruited or promoted into management or supervisory positions in the sheltered workshops or in the central nonprofit agencies. These agencies

(National Industries for the Blind and National Industries for the Severely Handicapped) are designated by CPBOSH to operate on its behalf in administering this program and function directly under CPBOSH jurisdiction. Yet, there is evidence that the employment practices of the central nonprofit agencies (especially with respect to recruitment and promotion of blind and severely handicapped individuals) have not been closely monitored by CPBOSH. Also the Committee needs more complete financial information to assess the operations of these instrumentalities which participate substantially in the administration of the CPBOSH Program.

The Committee believes that the sheltered workshops and the central nonprofit agencies should become model employers for the utilization of blind and other severely handicapped individuals in all positions and at all levels of responsibility. To aid CPBOSH in achieving these goals, justifications submitted to the Committee, beginning with the 1987 appropriations request shall include specific data in sufficient detail to make possible a comparison of employment opportunities, pay, and benefits which the CPBOSH Program provides to: (1) blind individuals, (2) other severely handicapped individuals, and (3) other individuals who are neither blind nor severely handicapped. Specific data shall also be included to show the positions, pay, and benefits provided to blind individuals employed by National Industries for the Blind as compared to the positions, pay, and benefits provided to sighted individuals employed by that agency. Similar information shall likewise be submitted with regard to employment opportunities provided by National Industries for the Severely Handicapped.

The Committee is also advised that a substantial portion of the revenues expended to administer the CPBOSH Program are derived from commissions paid to the central nonprofit agencies from purchases made by the Government. The commission revenues finance the central nonprofit agencies and provide over 90 percent of the funding for this program. These payments derived from Federal purchases are above and beyond the amount appropriated directly for salaries and expenses of the CPBOSH. Beginning with the fiscal year 1987 appropriations request, CPBOSH is directed to submit cost information showing how the commission rate paid to each central nonprofit agency is justified. Such information shall also include the audited financial statement of each central nonprofit agency for the fiscal year just ended, a financial operating statement up to date for the fiscal year in progress, and a budget for the fiscal year in progress at the time the justifications are submitted.

Federal Election Commission

1985 appropriation to date	$13,016,000
1986 budget estimate	12,756,000
House allowance	12,433,000
Committee recommendation	12,433,000

The Committee recommends an appropriation of $12,433,000 for the Federal Election Commission [FEC].

PROPOSED APPROPRIATIONS LANGUAGE

Committee for Purchase From the Blind and Other Severely Handicapped

Salaries and Expenses

For necessary expenses of the Committee for Purchase From the Blind and Other Severely Handicapped established by the Act of June 23, 1971, Public Law 92-28, including hire of passenger motor vehicles; $778,000: Provided, That none of the funds made available to the Committee for Purchase From the Blind and Other Severely Handicapped by this Act shall be used to administer the program authorized pursuant to Public Law 92-28 through the designation of any Central Nonprofit Agency, as authorized in the Act which fails to employ blind or other severely handicapped individuals to fill at least 50% of all existing or future job vacancies, with the priority that the Central Nonprofit Agency or each such Agency shall promote or recruit blind or severely handicapped individuals into all existing and future vacancies in management and supervisory positions: Provided further, That the Committee for Purchase From the Blind and Other Severely Handicapped shall submit to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives respectively a report, in conjunction with each year's annual appropriations request containing specific data in sufficient detail to make possible a comparison of employment opportunies, pay, and benefits (including such opportuntiies, pay, and benefits in management and supervisory positions) which the Central Nonprofit Agencies and qualified nonprofit agencies for the blind and other severely handicapped provide to (1) blind individuals, (2) other severely handicapped individuals, and (3) other individuals who are neither blind nor severely handicapped.

Mr. HOYER. Thank you very much.

Mr. Gashel, first of all let me say that Congressman Wolf was here for 80 percent of your testimony and had a meeting back in his office and asked me to express to you his thanks for you being with us. I told him of course we are always pleased on the committee to have people from Maryland appear here.

I note you are from Baltimore and although I don't represent Baltimore, whose district——

Mr. GASHEL. Ms. Mikulski. I work in her district and live in Mr. Mitchell's district.

Mr. HOYER. I was impressed with your testimony. I think it will be very helpful. I was interested in the statistics that you brought to our attention and we appreciate you taking the time to be with us. It was a most impressive testimony.

Thank you, sir.

TUESDAY, APRIL 15, 1986.

ALLIANCE OF NONPROFIT MAILERS

WITNESS

JOEL THOMAS, PRESIDENT, ALLIANE OF NONPROFIT MAILERS

Mr. HOYER. Now I am going to try to finish up Mr. Thomas and Mr. Cohen before we break, so you won't have to sit here ten or 15 minutes while I vote, so I am going to limit you each to five minutes a piece.

We will include your entire statements in the record at this time without objection.

Mr. THOMAS. Mr. Chairman, the testimony that I was going to present is in two parts and I did not intend to attempt to present the second part of it which is a fairly technical economic presentation which may or may not be of interest to the committee, depending on how it views the revenue forgone problem and the need to reduce that appropriation.

I am Joel Thomas, President of the Alliance of Nonprofit Mailers. I appreciate the opportunity to speak with you today on behalf of the 81 member organizations of the Alliance, which represent over 43 million members and volunteers in 86,000 chapters and affiliated organizations. Each of these members look to the decisions that you will make in this committee with profound interest and concern.

As we all know, this country is embarking upon a fresh effort to curb a Federal deficit that has grown to unprecedented proportions. Yet we also strive to provide necessities to those that require assistance. For those of you in Congress, it is a difficult task to determine the appropriate balance between governmental cost and public gain.

The Administration has suggested that we should place more reliance on the good works of private sector initiatives to achieve our social and humanitarian goals. The White House Office of Private Sector Initiaitves is the focal point for the Administration's efforts to promote private sector activity.

Our member organizations and other nonprofit entities have played a vital role in relieving government of burdens it otherwise would carry. They supply a considerable share of the social services, health care, education, research, arts, culture, community improvement, and public advocacy which our nation enjoys.

The millions of Americans who find in the organizations represented by the Alliance the means of channelling their volunteer spirit into action, agree with the President, who said:

"The American people are deeply proud of this long tradition of neighbor reaching out to neighbor with a helpful hand. In the continuing need to solve community problems, the compassionate actions of the private sector reflect the sense of essential decency and concern that has so often been a hallmark of our national character. Truly, there is no finer expression of the values we cherish than our united efforts to address problems through the creativity and initiative of the private sector."

The majority of people find organization necessary to guide and direct their volunteer impulse. A strong organization is built upon effective communications. It is vital that members and volunteers are kept informed so that private contributions can be channelled to necessary avenues of need and efforts to achieve worthy goals effectively realized.

Congress recognized the importance of effective communication by charities as early as 1952 and further sought to foster and nurture the volunteer impulse in 1970 when the Postal Reorganization Act was passed. The Revenue Forgone payment to the Postal Service, built into the Act, leverages greater efforts in behalf of the society by private sector nonprofit institutions, their members and volunteers. In 1970, participation by nonprofits was important to the health of society—in 1986, the work of these groups has become imperative.

In June of 1984, because the longstanding national policy of providing low postal rates to nonprofit organizations had come into jeopardy, the Alliance established the Preferred Rate Study Panel to examine the status of preferred postal rates. That panel consisted of the Honorable Gale McGee, former Chairman of the Senate Post Office and Civil Service Committee and a prime sponsor of the Postal Reorganization Act of 1970; Mr. Cyril F. Brickfield, Executive Director of the American Association of Retired Persons; the Honorable J. Edward Day, former Postmaster General of the United States; the Honorable James M. Hanley, former Chairman of the House Post Office and Civil Service Committee, and the Reverend Richard Knuge, S.M., then President of the National Catholic Development Conference.

The panel concluded that preferred rates of postage continue to be vital to the survival of many nonprofit organizations. Indeed, it concluded that they have become more important than ever because of reductions in government social spending and expectations that the nonprofit sector therefore will increase its participation in funding or providing social programs.

That conclusion was reinforced last year by the Honorable Thaddeus J. Dulski, former Chairman of the House Post Office and Civil Service Committee, in testimony presented before you.

But developments have led to a renewed attack on preferred rates of postage, an attack that threatens the life blood of the volunteer spirit. Now, more than ever, we need Congress to reaffirm support for the works of the private sector. Without such support, religious, philanthropic, educational, scientific, cultural, fraternal, veterans and labor groups will be forced into making hard decisions that can only decrease private sector activity.

Consider just a few examples: the country's oldest voluntary health agency—the American Lung Association—raises 84 percent of the funding for the programs and services of its 150 constituent and affiliated associations through direct mail programs. State-of-the-art techniques are used to constantly improve the management and efficiency of these programs so as to maximize the return in order to support ALA's wide-ranging programs and services. Those include funding biomedical research, operating smoking cessation programs, and many others.

The March of Dimes of Birth Defects Foundation relies heavily on direct mail funding appeals, mailing about 120 million pieces a year. If the revenue forgone appropriation were to disappear and no other system were created to sustain reduced rates, the March of Dimes would find itself saddled with millions of dollars in added costs. The services it provides to people in need, the research it funds, and the educational programs it maintains would obviously suffer.

In another area, the arts, we find from the Center Theatre Group of Los Angeles that the recently announced increase in third-class nonprofit rates that took effect March 9 will cost it dearly. How much? The amount is equivalent to the salaries of three union scale actors for a Mark Taper Forum main stage production, or three weeks of operations for the touring Children's Theatre Company, or two season's support for the Taper Forum's literary cabaret.

The Salvation Army estimates its 11,000 local units in the U.S. send out 50 million pieces of third-class mail for charitable appeals in order to support its huge humanitarian effort. Its chapters are financially self-supporting and largely dependent upon direct mail.

The American National Red Cross, faced with a rash of natural disasters in 1985, spent a record $48 million in six months and ended up $14 million in the red as a result. So it has had to redouble its efforts to raise funds necessary if it is to be ready when needed again, as it surely will be. The Red Cross has turned to direct mail to raise funds and to bolster the donor base for its reserve disaster fund.

Those are just a few examples that unequivocally demonstrate that the postal accommodation of reduced rates continues to assist and, in some cases, ensure the worthy social and humanitarian goals it was established to foster. In addition, of course, other organizations find it possible, because of preferred rates, to disseminate essential information that furthers man's understanding of the world and universe we live in and to communicate with large numbers of people on important and complex issues.

In the President's State of the Union Address this year, he praised the "mighty river of good words" that contributed $74 billion in voluntary giving last year alone. Consider that the revenue forgone payment was reduced to only $716 million last year. The connection between nonprofit mailings and volunteer giving is too elementary for me to have to explain it to you. I believe the return of the government's investment is about the best you will find anywhere in the budget.

Mr. Chairman, since December, nonprofit postal rates for third-class mailers have soared—from 45 to 68 percent, depending on the presort category. We have abandoned the worthy plans of the Postal Reorganization Act that called for preferred mailers to pay no more than the attributable costs of handling their mail. Any efforts by nonprofits to plan for the future by budgeting for operating expenses have been thwarted by these nightmarish postal increases.

Again, nonprofits that so vitally contribute to our society now depend so vitally on your reaffirmation of support.

The deficit must be reduced. If Congress sincerely believes that substantial savings in revenue forgone can help balance the budget, as some suggest, then the Alliance is prepared to assist you in every way possible.

Our testimony to the Postal Rate Commission on March 12 offers three new, innovative and effective methods of computing the subsidy. Each of these methods offer substantial savings to the taxpayer.

I include that testimony from our economic consultant, Dr. John Haldi, as part of this record, but I also note that the Commission's report and recommendation is not due until June and that this subcommittee and the entire Congress must appropriate funds now under current law.

If you think that reducing eligibility for preferred rate mailers will reduce the subsidy, then we are prepared to assist you in that regard, too. There are already comprehensive restrictions on the books that address eligibility. If these were more effectively enforced, savings would be realized.

Mr. Chairman, the Alliance of Nonprofit Mailers was formed by a group of organizations that recognize the urgency and the importance of private sector activity in providing for the welfare of our citizenry. We firmly believe that the welfare of the American people is well served by the revenue forgone provisions of the Postal Reorganization Act.

We believe that the $833 million needed to fund the program for fiscal year 1987—and that includes $58 million in a prior year adjustment—constitutes a wise investment in behalf of our entire society. We also know that nonprofit America, having already incurred two postal rate increases in 1986, cannot afford yet another.

Therefore, Mr. Chairman, we ask your continued support of revenue forgone.

Thank you very much.

Mr. Hoyer. Thank you very much for your testimony. I was pleased with your observation in there that the river of private giving and charitable contributions that the President spoke of was in fact directly related to the Revenue Forgone provision in here which in effect is the Federal Government's participation in that charitable giving and encouragement of volunteerism.

I thought it was an excellent statement. Of course, this committee very strongly agrees with you.

Thank you very much.

[The statement of Mr. Haldi follows:]

BEFORE THE

POSTAL RATE COMMISSION

PREFERRED RATE STUDY) DOCKET NO. SS86-1

COMMENTS OF
DR. JOHN HALDI
ON BEHALF OF
THE ALLIANCE OF NONPROFIT MAILERS

March 12, 1986

Madame Chairman, and Members of the Postal Rate Commission:

I appreciate this opprotunity to discuss with you some issues concerning the revenue forgone appropriation for the preferred-rate subclasses of mail. My testimony today has three primary purposes. They are:

- ° First, to explain the hidden subsidy in the revenue forgone appropriation;
- ° Second, to examine the secondary benefits that accrue from the revenue forgone appropriation; and
- ° Third, to suggest some alternative methods by which revenue forgone might be computed, along with a framework for evaluating the advantages and disadvantages of each alternative.

Hidden Subsidy Within the Revenue Forgone Appropriation

Ever since the Postal Reorganization Act became effective, the Postal Service has received each year a revenue forgone appropriation. At its inception, revenue forgone had two components: (1) a phasing appropriation, which was to cover the gradual phasing in of preferred rates until those rates were equal to full attributable cost; and (2) a continuing appropriation, to pay the difference between the revenue the Postal Service would have received but for the free or reduced-rate service required by the Act, and the revenues which the Postal Service actually receives from mail pieces carried at such reduced rates, or without charge in the case of free mail.[1]

Effective January 1, 1986, rates for all preferred subclasses of mail were raised to full attributable cost, except for free mail. This marked the end of the phasing appropriation. Except for free mail, the preferred subclasses of mail will henceforth pay their full attributable costs. In the future, revenue forgone will represent only the continuing appropriation.

In Docket No. R84-1 I previously discussed the revenue forgone appropriation before this Commission. There I pointed out that the Postal Service receives a contribution to fixed overhead from third-class nonprofit bulk mail which, as a percentage of cost, materially exceeds the contribution made by regular bulk mail.[2] This arises from the way in which the revenue forgone appropriation is computed.

In my prior testimony, I characterized as a "hidden subsidy" to the Postal Service that portion of the contribution to overhead considered to be extra generous. It appears that a similar situation also obtains with respect to the other preferred-rate subclasses. For fiscal 1985, it has been estimated that for all preferred-rate subclasses this hidden subsidy to Postal Service overhead amounts to some $272.2 million.[3] An estimate of the hidden subsidy in prior years is not available. Since 1970, however, the cumulative amount of this hidden subsidy doubtless amounts to billions of dollars.

On the basis of my involvement with postal matters, it would appear that some otherwise knowledgeable people do not appreciate how profitable the preferred-rate subclasses of mail have been to the Postal Service. Failure to recognize or acknowledge the generous contribution to overhead made by reduced-rate mail can lead to improper inferences, which will be addressed shortly.

For the record, let me explain here, in clear and simple terms, why the revenue forgone appropriation makes such a generous contribution to Postal Service overhead.

Succinctly, it costs the Postal Service considerably less to handle an average piece of reduced rate mail than an average piece of regular rate mail.[4] This lower unit cost of reduced-rate mail is key to understanding the hidden subsidy. Because revenue forgone is computed without any reference to the cost of handling the preferred classes of mail, the Postal Service receives full, regular rates for a lower-cost product.

Incidentally, not only does reduced-rate mail have a lower unit cost, in certain instances it receives even worse service than the corresponding class of regular rate mail.[5]

So, for handling a lower-cost, inferior product the Postal Service receives a higher markup, or "profit margin" than on other mail. The net result is an extra generous contribution to its overhead. When the revenue forgone appropriation is taken into account, it becomes abundantly clear that the present system actually discriminates against the preferred-rate subclasses by penalizing them with a higher markup.

To sum up, thanks to the revenue forgone appropriation, preferred-rate mail has made a substantial and disproportionate contribution to Postal Service overhead.

Secondary Benefits from Revenue Forgone

From what I read, it would appear that many people, including some who should know better, believe that preferred-rate users are the sole beneficiaries of the revenue forgone appropriation. Such beliefs are fundamentally wrong, in my opinion. Let me explain.

First, the Postal Service unquestionably receives an extraordinarily generous contribution to overhead for handling reduced-rate mail. This was addressed in the preceding portion of my testimony.

Second, the Postal Service has never given preferred-rate users a free ride, or any other special consideration -- despite subtle inferences or nuances to the contrary. The

Postal Service does not provide the revenue forgone appropriation; it receives it. Reduced-rate mailers owe no special thanks to the Postal Service for the revenue forgone appropriation. Any shortfall in revenue forgone triggers an almost immediate increase in preferred rates by the Governors of the Postal Service.

Third, the Postal Service is not a profit-making organization. So, what does the Postal Service do with the rather substantial hidden subsidy it receives from preferred-rate mail via the revenue forgone appropriation? The hidden subsidy is used to reduce the fixed overhead costs that must otherwise be distributed among regular rate mailers. In effect, regular rate mailers benefit from the billions of dollars of Postal Service overhead which reduced-rate mail has helped to defray.[6]

Finally, the U. S. Postal Service takes pride in pointing out that the minimum rate for a First Class letter, now 22 cents, is less than the minimum rate in other developed countries.[7] I accept their international comparison of First Class rates. But the favorable comparison with other countries does not arise because the Postal Service is a paragon of efficiency and increased productivity.[8] Rather, it arises from the huge contribution to overhead which the Postal Service receives from other classes of mail, including the preferred-rate subclasses. If First Class mail had to pay all or most of the fixed overhead of the Postal Service, then First Class rates would likely have to be raised to the levels of other developed countries.

Alternative Methods for Computing Revenue Forgone

It is possible to conceive of a number of different ways by which revenue forgone might be computed. This portion of my testimony will suggest three alternative methods for computing revenue forgone. For purposes of this testimony, I will refer to these three methods as:

1. The equal markup method;
2. The reduced markup method; and
3. The discounted rate method.

For ease of exposition, I will first describe how revenue forgone would be defined and computed under each of these alternative methods. Following this description, I will suggest a framework for evaluating the relative merits of the different methods. It will be seen that any one of these alternative methods would materially reduce the amount of the appropriation required to fund fully revenue forgone.

The Equal Markup Method

In the equal markup method, computation of revenue forgone takes as its starting point the cost of handling preferred-rate mail. Computation of revenue forgone would no longer be based on the rates charged for corresponding classes of regular rate mail. Revenue forgone would be computed using the same percentage markup, or coverage factor, that is used to develop corresponding regular rates.

Under the equal markup method, the Postal Service would receive the same percentage markup over attributable cost for preferred-rate mail as it receives for the corresponding class of regular rate mail. In other words, the percentage markup for preferred-rate users would be on an equal footing with regular rate mailers. The extra-high markups now implicit in preferred-rates would be eliminated.

The equal markup method of computing revenue forgone provides a minimum benchmark for possible reductions in the amount needed for revenue forgone. It has been estimated that use of the qual markup method in fiscal 1985 would have reduced the amount required for revenue forgone appropriation by $272.2 million. Under the other alternative methods, which I will now describe, even greater savings to the taxpayer are possible.

The Reduced Markup Method

The markup for preferred-rate mail does not necessarily have to achieve exact parity with the markup used for corresponding classes of regular rate mail. Instead, it is entirely feasible for the markup to be determined in a way that would give special consideration to preferred-rate users. For example, computation of revenue forgone for every preferred-rate subclass could be based on the lowest coverage factor paid by any class of regular rate mail. Historically, regular rate second and fourth-class mail have enjoyed rather low markups. This particular method of computing revenue forgone would extend the Postal Service's lowest commercial markup to all preferred-rate mail, in recognition of the extensive social benefits conferred by those organizations that send preferred-rate mail.

Alternatively, Congress may desire to retain some relationship between preferred-rate subclasses and corresponding classes of regular rate mail. This could easily be accomplished under the basic approach described here. Revenue forgone could be computed on the basis of (1) the attributable cost of each preferred-rate subclass, plus (2) a markup equal to some predetermined fraction of the markup used for the corresponding class of regular rate mail. For example, revenue forgone could be computed for each preferred-rate subclass using a markup that is equal, say, to one-third or one-half of the markup used for the corresponding class of regular rate mail.[9] Providing a lower markup for preferred-rate mailers would be another way to recognize the social contributions made by these organizations.

The Discounted Rate Method

The two preceding methods of calculating revenue forgone are based on an explicit markup over attributable cost. It is also possible to devise alternative ways of computing revenue forgone without reference to an explicit markup over attributable cost. It is only necessary to establish a "reference rate." This approach is essentially a variation on the present method used to compute revenue forgone. The present method uses as a reference rate the full rate paid by each corresponding class of regular rate mail.

For purposes of computing revenue forgone, the reference rate does not need to be the full rate. The reference rate could just as easily be established by using a standard discount from full rates. To illustrate, revenue forgone could be computed as the difference between (1) what preferred-rate users actually pay, and (2) the corresponding regular rate less, say, a 20 or 25 percent discount. Discounts are widespread in the business world, especially those that sell services. Some airlines, for example, have a 10 percent discount for senior citizens, as well as a variety of discounts for other users. Similarly, hotels and car rental agencies typically have a variety of discounts available for different users.

Under the discounted rate method, users of all preferred-rate categories except free mail would continue to pay their full atrributable cost. Revenue forgone would be the difference between the reference rate and attributable cost, times the applicable volume. If the reference rate, or the discounted full rate, happened to be less than full attributable cost for any of the preferred-rate subclasses, then no revenue forgone would need to be paid for that particular subclass -- except, of course, for free mail, where revenue forgone must also cover attributable cost.

Relative Merits of Alternative Methods

For the past several years, the current administration's budget has proposed to eliminate the revenue forgone appropriation. Congress has to date resisted these budget proposals, and it may well continue to do so. Nevertheless, it seems to me that any forward-looking analysis of alternative methods for computing revenue forgone needs to anticipate the consequences both (1) if Congress appropriates revenue forgone, or (2) if Congress fails to appropriate revenue forgone.

In the event of a failure of appropriations, the law could stipulate that rates charged to preferred-rates users would increase to the level implicit in whatever formula is used to calculate revenue forgone. Let me hasten to point out, though, that the law need not necessarily be written this way. The law might explicitly provide otherwise.

For instance, in the event Congress should fail to appropriate revenue forgone, the law might stipulate that (1) preferred rates would not rise above full attributable cost, or (2) preferred rates would increase by no more than a fixed percentage, or (3) preferred rates would be set in some predetermined way vis-a-vis corresponding regular rates. To illustrate this last possibility, the markup on preferred-rate classes might be set at some predetermined fraction of the markup used to establish rates for regular rate mail. Let us now examine the relative merits of these alternative ways of computing revenue forgone.

One basic criterion for evaluating the above-described alternative methods concerns ease of implementation. In my opinion, each of these alternative methods is easy to understand and easy to compute. Implementation of any one of them should be straightforward. They all appear to meet this basic criterion.

A second possible criterion is the extent to which an alternative method will reduce the amount needed to fund revenue forgone; i.e., the savings to taxpayers. Depending on the method and the particulars that are adopted, the amount needed for revenue forgone can be reduced to any desired level. At current mail volumes, the equal markup methods would save taxpayers just over a quarter billion dollars. The other two methods would save taxpayers even more.

A third way to evaluate these alternatives is to view them solely from the perspective of Postal Service revenues and the contribution which preferred-rate mail makes to the Postal Service's fixed overhead. Viewed from this somewhat narrow perspective, the Postal Service would presumably want the highest appropriation it can obtain, assuming that Congress is willing to appropriate the money each year. Suppose there should be a failure of appropriations, however. Then from the perspective of maximizing the contribution to Postal Service overhead, the best alternative would be that which most closely approximates Ramsey pricing.

An analysis of Ramsey pricing as it pertains to preferred-rate mail would involve a lengthy digression on the long-run elasticity of demand by preferred-rate users. Such a digression is beyond the scope of this testimony. However, should the rates actually paid by preferred-rate users approach the level of rates paid by regular rate mailers, I would then opine that the long-run elasticity of demand would become farily high. If my surmise is correct, then from the perspective of maximizing the contribution to Postal Service overhead, enlightened self-interest would indicate that revenue forgone should be computed by a method which requires an appropriation lower than that which would result from the equal markup methods.

Yet another way to evaluate these alternative methods is to consider them in light of (1) the criteria specified in Section 3622(b) of the Postal Reorganization Act, (2) the legislative history of reduced-rate mail, and (3) the wide variety of laudatory social purposes served by organizations that use reduced-rate mail, especially as they make a direct contribution to fulfillment of public policy objectives. Section 3622(b) spells out the criteria which Congress wants considered in postal rate setting. Based on the different criteria contained in Section 3622(b), it would appear that Congress does not want rates for all classes of mail set at levels which maximize the contribution to Postal Service overhead. Congress made special provision for preferred-rate users long before the Postal Reorganization Act became law. Since 1970, Congress has consistently supported reduced-rate users. Moreover, in light of the extensive contribution which preferred-rate organizations make to broad public policy objectives, I would suggest that social efficiency is best served by having preferred mailers continue to pay rates which just equal the marginal cost of handling their mail.

In light of the above consideration, I suggest that this Commission recommend to Congress that it adopt either the reduced markup method or the discounted rate method for computing revenue forgone. These two methods are fully consistent with past Congressional support for preferred-rate mailers.

Furthermore, they also make a greater contribution to reduction of the budget deficit. If either of these two methods were used to compute revenue forgone, the amount needed could readily be reduced by anywhere from $400 to as much as $600 million below the current level.

Footnotes

[1] Postal Rate Commission, Docket No. R80-1, Opinion and Recommended Decision (February 19, 1981), Vol. 2, Appendix I, p.1. Note that computation of the continuing appropriation allows the Postal Service to presume, or have the benefit of the doubt, that it "would have received" the same volume and revenue if free or reduced rate service were eliminated and all such mail had to pay the full regular rate. This presumption is questionable; i.e., elimination of reduced rate mail would almost surely result in some diminution of volume and revenue, and there could be a sharp diminution. In economic terms, computation of the continuing appropriation treats the demand for reduced-rate mail as totally inelastic, at least up to the level of rates charged for regular rate mail.

[2] Docket No. R84-1, Direct Testimony of John Haldi on behalf of the Alliance of Nonprofit Mailers, ANM-T-2, pp. 2-11.

[3] The extra generous contribution to overhead by the preferred-rate subclasses would be eliminated by a rate structure that accurately and fully reflected cost-causing phenomena such as weight and shape. In prior dockets before this Commission I have consistently supported efforts to develop rate structures that would reflect cost-causation more accurately. Perhaps some day, in the near or distant future, more accurate cost-based rate structures will come into being. In the meantime, the extra generous contribution to overhead which is now buried in the revenue forgone appropriation can be reduced significantly by adopting alternative methods of computing revenue forgone, as described in the last section of this testimony.

[4] The lower unit cost of reduced rate mail has been a persistent phenomenon over the years.

[5] See Bulk Business Mail, Executive Brief (December, 1985) an Audit Report by the Postal Inspection Service. According to this audit report (p. 10), in a test of bulk mail letters, 59 percent of carrier presort mailings met service standards, while only 17 percent of the 5-digit and all other presort categories met service standards. The 5-digit and all other presort categories constitute a much higher proportion of non-profit bulk mail than they do for bulk regular rate (BRR) mail. Thus, on average, non-rofit bulk mail receives significantly worse service than does BRR mail. Moreover, many BRR mailers also request and receive delivery on specific dates for a particular mailing. With regard to specific day requests the Postal Inspection Audit Report states the "(p)lant capacity and delivery constraints often necessitate that other (bulk) mailings be set aside to give these mailing preferential treatment." (p.9.) To the best of my knowledge, nonprofit bulk mailers never request delivery on specific dates, whereas the practice is fairly common among BRR mailers. Thus nonprofit mailers suffer disproportionately from the delays occasioned by the practice of catering to specific day requests without ever profiting from the practice, as do many BRR mailers. On net balance, nonprofit mailers receive inferior service.

[6] It is clear that the Postal Service receives a very generous contribution to its overhead out of the total revenue which it receives for handling preferred-rate mail. It would be incorrect, however, to say that preferred-rate mail "cross-subsidizes" any class of regular rate mail. By the same token, if regular rate mail had to contribute a higher proportion of total Postal Service fixed overhead, and preferred-rate mail a lower proportion, it would be equally incorrect to say that preferred-rate mail was being cross-subsidized. So long as each class of mail pays its own attributable costs, there is no cross-subsidy.

[7] See U. S. Postal Service, Comprehensive Statement on Postal Operations, 1985, p. 31, Table 7.

[8] In the thirteen year period 1971-84, USPS Total Factor Productivity increased only 6.3 percent, which is an annual increase in factor productivity of only 0.5 percent. See Comprehensive Statement on Postal Operations, 1985, p. 43, Table 16.

[9] The amount needed for revenue forgone would consist of the markup over cost for all preferred-rate subclasses, plus the attributable cost of free mail.

TUESDAY, APRIL 15, 1986.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

WITNESS

MARK N. COHEN, CHAIRMAN, NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION'S ENFORCEMENT LIAISON COMMITTEE AND DIRECTOR OF ENFORCEMENT AND COMPLIANCE OF THE PENNSYLVANIA SECURITIES COMMISSION

Mr. HOYER. Mr. Mark Cohen of the North American Securities Administrators Association..

Mr. COHEN. Good afternoon, Mr. Chairman and members of the committee.

I would ask that our written statement be entered into the record.

Mr. HOYER. Without objection.

Mr. COHEN. The North American Securities Administrators Association appreciates the opportunity to appear before this subcommittee in connection with hearings on the proposed Internal Revenue Service budget for fiscal year 1987.

My name is Mark N. Cohen. I am Chairman of NASAA's Enforcement Liaison Committee and Director, Division of Enforcement and Compliance of the Pennsylvania Securities Commission.

NASAA is a 68-year-old association of the 65 state and provincial securities administrators from the United States, Canada and Mexico. Individually, we are charged with the responsibility for administering and enforcing securities laws in our various jurisdictions. NASAA works to maintain the integrity of the securities markets, to protect investors, and to prevent and curb abusive practices.

Two interrelated issues impact upon that function and mesh closely with the enforcement program of the IRS. Those issues are abusive tax shelters and the sharing of investigative information.

More than $10 billion in tax-sheltered investments were sold in this country in 1985. The General Accounting Office has estimated that abusive tax shelters rob the Treasury of $3.6 billion per year. While tax shelters are not always abusive, an abusive tax shelter is almost always a security.

On this subject, there should be no need to engage in political niceties. It is time for the IRS to declare war on abusive tax shelters and Congress should support that effort with money, manpower and marching orders direct from Washington to the district offices.

The state securities administrators have been fighting in the trenches against the recent onslaught of the middle class, mass marketed abusive tax shelter. The enemy directing this assault is cunning, resourceful, outwardly respectable, utterly ruthless and possesses a voracious appetite that feeds off the American pocketbook.

The fortifications erected by the states are too often fragmented by geographical boundaries, limited jurisdiction, and scarce resources. These breaches in law enforcement must be secured by closer state-Federal cooperation.

Taking aim at abusive tax shelters presents an elusive target because of all its possible permutations. There is the "I know it when I see it" test for obscenity. When it comes to abusive tax shelters, state securities administrators "know it when they smell it."

Tax shelters start to stink when you find artificial transactions, inflated appraisals, high leverage, nonrecourse liability, guaranteed writeoffs, legal defense funds, guaranteed payoffs, little or no investor participation, use of offshore entities, inconsistencies between written and oral representations, lull letters, backdated documents, switching of properties, egregious front-end fees, and boiler room operations pushing schemes lacking in economic reality.

As the tax code changes and world economies shift, we see money running for shelter from real estate partnerships and oil and gas wells to computer software, equipment leasing, videotape master records, Arabian race horses and Rex rabbits. Our experience shows that these schemes not only multiply like rabbits, they are also hard to snare.

Such shelters produce none of the economic or social benefits that Congress seeks to encourage through the use of legitimate shelters. Instead, money is siphoned from legitimate investment opportunities to line the pockets of the promoters. Such scams have a ripple effect on the investing community and wash out the seed money for new businesses and jobs.

Last year, NASAA brought to your attention the multi-state effort taken against the American TV or videogram shelter which involved the production and distribution of videotapes of song and dance segments for TV variety programs.

As we sit here today, another multi-state effort, coordinated by Pennsylvania, Florida and Oklahoma, is resulting in lawsuits being filed against persons operating a boiler room from Fort Lauderdale and soliciting victims nationwide to invest in oil and gas wells. This group has brought a new twist to their operation by baiting their hooks with the lure of legitimacy, courtesy of the U.S. Government.

These wells are alleged to be located on the untapped reserves of Indian land. And now that the Comanche Nation has found "a white man they can trust," they are willing to do business.

Of course, the promoters tout the fact that drilling on Indian land requires the approval of the Department of Interior, Bureau of Land Management and Bureau of Indian Affairs. All things being equal, that would be a fair enough statement, but these scammers speak with forked tongue. Investors have been baited and switched from well sites on Indian land in Oklahoma to nonproductive holes in Ohio.

So what is there to do about the situation? We applauded the action taken by Congress in passing the Tax Equity and Fiscal Responsibility Act of 1982. Prior to TEFRA, the IRS audit program was at least three to five years behind the current year.

By that time, the promoters were usually long gone or, if caught, the money was long gone—either spent or offshore.

Often it was the duped investor that ended up paying back taxes and penalties that easily could add up to twice the initial investment in the tax shelter.

With the state securities administrators being cognizant of current year filings and solicitations, there was little incentive to cooperate with the IRS. The high hopes and expectations that came with the passage of TEFRA have gone largely unrealized although the potential still remains.

Section 6700 and 7408 provide the opportunity for current year civil penalties and injunctions against promoters. This is attacking the shelter at its source—the promoters and pitch men, before the audit process has begun.

With the use of prefiling notification to investors and the registration requirements of the Deficit Reduction Act of 1984, the IRS has been given the opportunity to join the states in some degree of market regulation. This would put our enforcement emphasis where it should be, on preventive enforcement at the front end of a shelter program.

Based on a review of the promotion, if IRS believes that the tax deduction is not allowable and if the deduction is taken anyway, the taxpayer's return will be audited.

This requires the principal organizer of a tax shelter to register the tax shelter with the IRS on Form 8264 not later than the day of the first offering and requiring the tax shelter number be given to each investor to report on Form 8271 if they wish to claim any deduction.

Whether because of bureaucratic inertia, lack of resources and/or inexperience, the IRS hasn't adequately implemented the congressional intent to enjoin ongoing abusive tax shelter offerings before the filing of investor returns.

It is urged that Congress increase and/or the IRS reallocate resources and manpower to effectively implement the promoter penalty and injunctive provisions of TEFRA. Enforcement at the investor audit level is too little, too late, enormously wasteful of limited resources and loses sight of the promoter as the primary target.

The IRS has moved to establish tax shelter program coordinators in each district director's office. A national tax shelter coordinator has also been established, although this position has been held by three different persons over the past two years, which certainly doesn't help program continuity. NASAA's Enforcement Liaison Committee has a member designated to the IRS to assist enforcement liaison efforts.

Once TEFRA is utilized as it should be, it remains to be seen whether the state securities administrators and the IRS can offer mutual assistance in combating abusive tax shelters.

Presently the states haven't gotten much of anything from the IRS, except press announcements when the Tax Division of the Department of Justice files suit. While many states have opened their files to agents of the IRS, this flow of information has been traveling down a one-way street.

The reason cited by the IRS for its inability to share any information with the states on abusive tax shelter cases is Section 6103 of the Internal Code, which holds tax returns and tax return information to be confidential. While not presently advocating a statutory amendment, we are advocating the implementation of a more reasonable reading of the statute.

It is evident that information gathered during the investigation of a suspected abusive tax shelter would likely result in the securing of promotional materials, statements, audit reports, appraisals, reserve information, projections, development status information, names of other investors, the identity of the true promoters, et cetera, by IRS agents. This should not be considered tax return information.

Why not make this information available to the states under condition that it not be disclosed except in connection with an adjudicatory action or proceeding to which the state is a party?

Congress recently amended Section 8(e) of the Commodity Exchange Act to provide and foster just such information sharing. There should also be a concerted effort to assist the states by providing technical support such as expert testimony, appraisal and valuation assistance.

In cases settled or brought before a court in equity, the attorneys in the Tax Division should fashion equitable prayers for relief which would build in requirements of the promoter to notify the IRS of future tax shelter activity complete with all offering and promotional materials, investors' names and addresses and the waiver of any restriction on dissemination of this information to any state or Federal governmental agency.

In many parts of the country, effective personal contacts have been developed between a state and district office. However, the direction from headquarters to the field has not come through loud and clear that we are on the same side of this battle. There is more than enough unlawful activity going on to keep all of us busy, so why not explore all possible avenues of sharing investigative information and affording each other prosecutorial assistance.

A final point I would like to address is one that has been brought to my attention by a number of states and concerns a situation that has brought these states into conflict with the IRS. The situation arises when a promoter, convicted of securities fraud in an abusive tax shelter case, has had assets frozen by the state court. The securities administrator wishes to liquidate assets and distribute the funds to the defrauded investors while the IRS wants the money turned over to the Treasury, and slaps a lien on the assets.

While the state has shown that these assets were acquired as a direct result of defrauding investors of their money, the IRS steadfastly insists on keeping the assets unless the state can trace each person's investment to the promoter through the banking system and to its ultimate utilization on behalf of the investor.

The IRS will relent only if the state court finds that the assets are not that of the promoter but are held in a constructive trust for the investor.

This tracing of funds and legal construction of trust theory is usually a most difficult and time-consuming one to establish and we would urge the IRS to relent on this policy and not force the states to jump through endless hoops in an attempt to return money to defrauded investors.

We stand ready and willing to meet with the IRS to explore these matters and others of mutual concern in a joint effort to combat abuses to our tax system and securities markets.

Thank you.

Mr. **Hoyer**. Thank you very much. We are adjourned until tomorrow morning at 10:00 o'clock.

[The following statements were provided for the record:]

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Statement of Mark N. Cohen
Chairman, Enforcement Liaison Committee
North American Securities Administrators Association
Director, Division of Enforcement and Compliance
Pennsylvania Securities Commission

before the U.S. House of Representatives
Committee on Appropriations
Subcommittee on the Treasury, Postal Service
and General Government

on the FY 1987 Internal Revenue Service Budget

April 15, 1986

Mr. Chairman and Members of the Subcommittee:

The North American Securities Administrators Association (NASAA) appreciates the opportunity to appear before this Subcommittee in connection with hearings on the proposed Internal Revenue Service (IRS) budget for fiscal year 1987. My name is Mark N. Cohen. I am Chairman of NASAA's Enforcement Liaison Committee and Director, Division of Enforcement and Compliance of the Pennsylvania Securities Commission. NASAA is a 68-year-old association of the 65 state and provincial securities administrators from the United States, Canada and Mexico. Individually, we are charged with the responsibility for administering and enforcing securities laws in our various jurisdictions. NASAA works to maintain the integrity of the securities markets, to protect investors, and to prevent and curb abusive practices.

Two inter-related issues impact upon that function and mesh closely with the enforcement program of the IRS. Those issues are abusive tax shelters and the sharing of investigative information.

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So what is there to do about the situation? We applauded the action taken by Congress in passing the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Prior to TEFRA, the IRS audit program was at least 3-5 years behind the current year. By that time, the promoters were usually long gone; or, if caught, the money was long gone--either spent or off shore. Often it was the duped investor that ended up paying back taxes and penalties that easily could add up to twice the initial investment in the tax shelter. With the state securities administrators being cognizant of current year filings and solicitations, there was little incentive to cooperate with the IRS. The high hopes and expectations that came with the passage of TEFRA have gone largely unrealized although the potential still remains. Sections 6700 and 7408 provide the opportunity for current year civil penalties and injunctions against promoters. This is attacking the shelter at its source--the promoters and pitch men, before the audit process has begun. With the use of prefiling notification to investors[1] and the registration requirements of the Deficit Reduction Act of 1984[2] the IRS has been given the opportunity to join the states in some degree of market regulation. This would put our enforcement emphasis where it should be--on preventive enforcement at the front end of a shelter program.

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1. Based on a review of the promotion, if IRS believes that the tax deduction is not allowable and if the deduction is taken anyway, the taxpayer's return will be audited.
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IRS, this flow of information has been travelling down a one way street. The reason cited by the IRS for its inability to share any information with the states on abusive tax shelter cases is Section 6103 of the Internal Code (which holds tax returns and tax return information to be confidential). While not presently advocating a statutory amendment, we are advocating the implementation of a more reasonable reading of the statute.

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IRS wants the money turned over to the Treasury, and slaps a lien on the assets. While the state has shown that these assets were acquired as a direct result of defrauding investors of their money, the IRS steadfastly insists on keeping the assets unless the state can trace each person's investment to the promoter through the banking system and to its ultimate utilization on behalf of the investor. The IRS will relent only if the state court finds that the assets are not that of the promoter but are held in a constructive trust for the investor. This tracing of funds and legal construction of trust theory is usually a most difficult and time consuming one to establish and we would urge the IRS to relent on this policy and not force the states to jump through endless hoops in an attempt to return money to defrauded investors.

We stand ready and willing to meet with the IRS to explore these matters and others of mutual concern in a joint effort to combat abuses to our tax system and securities markets.

Thank you.

JIM WRIGHT
TEXAS
MAJORITY LEADER

Congress of the United States
House of Representatives
Office of the Majority Leader
Washington, D.C. 20515

April 15, 1986

Hon. Edward Roybal
Chairman
Subcommittee on Treasury - Postal Service
General Government
House Committee on Appropriations
Washington, D. C.

Dear Mr. Chairman:

Enclosed is testimony being submitted before your hearing today by Mr. Bill Methenitis on behalf of the Dallas-Fort Worth International Trade Services Task Force, the cities of Fort Worth and Dallas, the DFW Airport Board, Dallas Market Center, the Fort Worth and Dallas Chambers of Commerce, the North Texas Commission, the North Texas Customs Brokers and Foreign Freight Forwarders Association, the DFW Air Cargo Association, and the DFW Foreign Trade Zone Advisory Board.

All of these civic and local governmental groups are deeply concerned about the lack of Custom's personnel in the rapidly growing inland world port of DFW. The lack of adequate Custom's personnel has reached the crisis point and is restricting the processing of both international air passengers and cargo coming into the port.

Your consideration and personal attention to the needs expressed in this testimony would be very deeply appreciated.

Best regards.

Sincerely,

Jim Wright

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April 15, 1986

STATEMENT OF WILLIAM M. METHENITIS
ATTORNEY, STRASBURGER & PRICE, DALLAS, TEXAS

on behalf of the

DFW INTERNATIONAL TRADE SERVICES TASK FORCE
CITY OF DALLAS
CITY OF FORT WORTH
DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD
DALLAS MARKET CENTER
DALLAS CHAMBER OF COMMERCE
FORT WORTH CHAMBER OF COMMERCE
NORTH TEXAS COMMISSION
NORTH TEXAS CUSTOMS BROKERS AND FOREIGN
FREIGHT FORWARDERS ASSOCIATION
DFW AIR CARGO ASSOCIATION
DFW FOREIGN TRADE ZONE ADVISORY BOARD
ON FISCAL YEAR 1987 CUSTOMS SERVICE APPROPRIATIONS REQUEST

before the

SUBCOMMITTEE ON TREASURY - POSTAL
SERVICE - GENERAL GOVERNMENT
HOUSE COMMITTEE ON APPROPRIATIONS

Mr. Chairman, I appreciate the opportunity to provide this statement to the Subcommittee during its consideration of Fiscal Year 1987 appropriations for the Custom Service. Our community is strongly supportive of Customs' goal of increased efficiency through modernization and automation. At the same time, despite the joint efforts of Customs and the Dallas/Fort Worth trade community in making Customs as efficient as possible, the lack of Custom personnel in the Dallas/Fort Worth District is restricting the processing of passengers and cargo.

Personnel Shortage. There is a critical personnel shortage at Dallas/Fort Worth. Currently assigned to Dallas/Fort Worth are 41 inspectors and 3 aides in the Inspection and Control Division, and 10 import specialists and 5 entry personnel in the Classification and Value Division of Customs. This year, it is anticipated that those personnel will be responsible for processing over 850,000 passengers and 81,000 formal entries. As a comparison, in 1981, 31 inspectors with 2 aides and 12 import specialists with 7 entry personnel were responsible for 406,247 passengers and 42,601 formal entries. During that same period of time, the number of clerical personnel has been reduced by approximately 9 people, so that some of the inspectors and import specialists are answering phones, doing filing, making computer entries, acting as cashiers, and collecting baggage tags from passengers. The net effect is that in a five year period Dallas/Fort Worth has experienced an increase of 109 percent in passenger clearance and 90 percent in cargo clearance handled by roughly the same number of Customs personnel.

Increased Automation. Dallas/Fort Worth has been among the national leaders in working with Customs to make Customs processing as efficient as possible. The Dallas/Fort Worth International Airport Board is in the process of implementing an automated cargo system dealing with all facets of international trade that will compliment the Customs ACS system. In addition, Dallas/Fort Worth and Customs are involved in joint projects concerning a Dallas/Fort Worth Customs Service Center, refinements to the PAIRED program, a drug interdiction task force, and programs for expediting passenger clearance.

Our community has invested a great amount of time and capital to increase the efficiency of cargo and passenger clearance. Yet, despite our cooperative efforts with Customs, the staggering increase in the volume of passengers and cargo entering at Dallas/Fort Worth has resulted in a situation that cannot be remedied through automation alone. Dallas/Fort Worth needs more Customs personnel.

Cargo Clearance. While the increase in cargo entries at Dallas/Fort Worth has by itself placed a great burden on inspectors, it has been the increase in passengers that has most affected cargo clearance. During most of 1985 and 1986, every afternoon between 2:00 and 3:00 p.m., the cargo office at Dallas/Fort Worth has been closed for the rest of the day because every inspector has been needed to process passengers. With the additional influx of international passengers expected during the summer, it is possible that cargo clearance at the world's fourth busiest airport will become a half day operation.

Import specialists have similarly been affected by the great increase in cargo coming through Dallas/Fort Worth. Moreover, because so much of the Dallas/Fort Worth cargo is textile related, the responsibilities of import specialists have increased even beyond the increase of entries. With the implementation of new textile regulations last month, textile clearance has been delayed on the average of an additional three days because of the overwhelming workload of import specialists. Similarly, the textile regulations have placed an increased burden on mail clearance because of the volume of textile oriented parcels that are received in our area. The combination of textile regulations treating these parcels as formal entries, and the routing of these parcels through Oakland without clearance has resulted in a tremendous backlog of parcels, which are by their nature labor intensive to clear.

Drug Interdiction. The increase in passenger traffic has also increased the amount of drug trafficing through Dallas/Fort Worth. Although drug seizures have been made on flights originating from all parts of the world, the large number of Latin American flights to Dallas/Fort Worth has made Dallas/Fort Worth a part of the border drug problem. We believe the local Customs office has done an admirable job of drug interdiction, but the resources have simply not been available to significantly deter the increasing drug traffic.

Conclusion. Dallas/Fort Worth has enjoyed a good working relationship with Customs at the national, regional, and local levels. Our community wishes to continue working with Customs to develop and implement the most effective systems for clearing passengers and cargo. No amount of change in programs, however, can result in efficient clearance of passengers and cargo in a high growth area such as Dallas/Fort Worth unless personnel sufficient to operate those programs are available. We urge the Committee to review Customs budgeting in light of the critical need for additional personnel in high growth areas such as ours.

Embassy of The Commonwealth of The Bahamas
600 NEW HAMPSHIRE AVENUE N W
WASHINGTON D C 20037

EMB/200/126/5

21 April, 1986

Congressman Edward Roybal
Chairman
Subcommittee Treasury, Postal
Service and General Government
H-164 Capital Building
Washington, D.C. 20515

Dear Mr. Chairman:

On the 15 April, 1986 your Subcommittee on Treasury, Postal Service and General Government held public hearings to evaluate the efforts of the Gramm-Rudman-Hollings Budget Reductions on various programmes pertinent to the Subcommittees responsibilities.

Among those matters addressed was the budgetary reductions to the U.S. Customs Service drug interdiction programmes.

For some time The Bahamas Government has cooperated with U.S. Law Enforcement Agencies in an attempt to supress the illegal flow of narcotic drugs through the Bahamian archipelago. An integral part of the joint U.S.-Bahamian campaign against the illegal traffic is the AEROSTAT balloon system.

Presently the U.S. Customs Service has one AEROSTAT stationed in the Northern Bahamas at Grand Bahama Island. The success of the improved surveillance capability in the Northern Bahamas has served to highlight the critical need for a complimentary system in the Southern Bahamas if we are to stop the flow of drugs through The Bahamas and into the United States.

The Bahamas' commitment to the AEROSTAT programme is outlined in the attached statement. We urge that your subcommittee resist any budgetary cuts which could jeopardize the future of the programme.

I respectfully request that the attached statement be included as a part of the hearing record for the 15 April, 1986 hearings before your subcommittee.

Sincerely

M. Teresa Butler
Charge d'Affaires a.i.

REVIEW OF JOINT U.S. - BAHAMAIAN COOPERATIVE EFFORTS IN THE WAR AGAINST THE TRAFFIC OF ILLEGAL NARCOTIC DRUGS

THE BAHAMAS' GEOGRAPHICAL POSITION, LYING OFF THE SOUTHEASTERN COAST OF THE NORTH AMERICAN CONTINENT, MAKES IT VULNERABLE TO ACCESS AS A PIPELINE FOR THE DRUG TRAFFICKING TRADE. ITS "TRANSIT STATE" STATUS CALLS FOR CONSIDERABLE FUNDS TO PREVENT THE PASSAGE OF DRUGS THROUGH ITS LAND, SEA AND AIRSPACE. TO PROPERLY PERFORM THIS TASK REQUIRES LAW ENFORCEMENT AGENCIES WHICH CAN OPERATE IN ALL THREE ENVIRONMENTS. THE ENORMITY OF THIS TASK MAY BE APPRECIATED WHEN ONE RECOGNIZES THAT THE BAHAMAS IS AN ARCHIPELARGIC STATE COMPRISED OF SOME 700 ISLANDS SCATTERED OVER AN AREA OF 100,000 SQUARE MILES OF SEA. THE BAHAMAS HAS A TOTAL ESTIMATED POPULATION OF 240,000 PEOPLE. AS A RESULT THE VAST MAJORITY OF THE ISLANDS HAVE NO PERMANENT YEAR ROUND POPULATION.

For years the Bahamian Defence Force officials have faced the seemingly insurmountable task of patrolling the marine areas to curb the three-pronged threat of illigal fishing, drug smuggling and illegal immigration.

Prior to The Bahamas gaining independence in 1973 the onus of patrol fell upon the British. A British frigate patrolled the areas and some military aircraft were based in Nassau. Although the frigates have good communication equipment, this type of vessel was not designed for patrol in The Bahamas where the sea bank's average depth of water is about ten feet. In addition the archipelagic nature of the territory was a disadvantage for the Royal Navy Frigates.

By mid-1970's the Marine Division of the Police was expanded and the Royal Bahamas Defence Force (RBDF) was created to operate the four MK 60 feet patrol boats previously owned by the Police and thirteen other crafts ranging in size from twenty-nine feet to one-hundred and fifty feet.

The quickest and most efficient way to patrol an area is by aircraft. In 1981 the Government formed the Defence Force Airwing and leased an aero-commander from Bahamasair, the national air carrier. This aircraft has given good service although it was not built for military purposes.

TRAINING

The numerical strength of the Royal Bahamas Defence Force stands as of February 1986 at 50 officers and four-hundred and eighty marines. Officers have been trained at the Royal Navy College, Dartmouth, England. All seamanship and advancement training is undertaken at Coral Harbour, New Providence, Bahamas where the Defence Force base is located.

The Government of The Bahamas acknowledges its deep gratitude and appreciation for the technical training which has been afforded some of the staff from The Bahamas Defence Force by United States agencies in recent times.

During 1985, twenty-three RBDF personnel (Able-Seaman to Lieutenant) benefitted from thirteen courses offered by the U.S. Government.

To date twenty RBDF personnel have been nominated to attend twelve courses during 1986 and there are five more nominations to be submitted when the dates of the courses in the fall of 1986 are known.

Mention must be made of the courses conducted under the International Military Education and Training Programs which were attended by radio technicians, electricians and mechanics. As a direct benefit of these studies, the Defence Force attributed the ability of its ship to make longer voyages as defects could now be attended to at sea instead of making the time-wasting trips to the base on New Providence for repairs.

At Governor's Island, New York our personnel were taught the essentials of search and rescue operations to aid them in approaching other vessels at sea.

As far as drug interdictions are concerned, the seamen received invaluable exposure as exchange personnel on board U.S. Coast Guard boats and were able to study methods of interdicting persons engaged in drug trade.

Undoubtedly, this exposure has had the cumulative effect of instilling the much-needed confidence in the seamen in their confrontations with drug traffickers during their assignments at sea. These bilateral arrangements between the U.S. and The Bahamas are important examples of the strides which can be made towards the eradication of the common enemy of the drug trade which is being faced by both our countries in this period of our history. Our combined efforts can further carry the message to drug dealers that their activities in these parts will be closely monitored, and that swift action will be taken on our part to bring them to justice.

OPERATIONS

The drug smugglers have numerous routes and methods of operation. The Defence Force deploys its craft in areas where they have intelligence reports that smugglers will use, but on numerous occasions have been foiled in their attempts to make arrest as smugglers have used decoys to camoflage their presence elsewhere in the cays and island chain. The Defence Force has found that smugglers are well organized and are well-equipped with an abundance of funds and possess good communication and intelligence gathering networks.

The Defence Force, which is a relatively young agency collaborates closely with other Bahamian law enforcement agencies, namely Customs, Police, Immigration and the Department of Fisheries. It also works closely with the U.S. Coast Guard with whom it presently enjoys excellent relations. The experience and expertise of the officers and marines develop daily as they undertake patrol duties. Although some impact has been made on the drug operation, the sophistication of the drug smugglers have been noticed in their modus operandi as is evidenced by the change of primary means of transportation from sea to air.

In April 1985, drug interdiction in the South Florida/Bahamas area took a giant leap forward with the first joint U.S.-Bahamian enforcement operation. Initially dubbed "Blue Lightning" the Operation originated in a February meeting between Vice-President George Bush and Bahamian Minister of National Security, A. Loftus Roker, and Foreign Affairs Minister, Clement T. Maynard. Coordinated by the National Narcotics Border Interdiction System, Blue Lightning netted 62000 pounds of marijuana and over 6300 pounds cocaine. The operation also established the groundwork for continued joint U.S.-Bahamian operations on a day-to-day basis.

Since April 1985 the U.S. and The Bahamas have quietly worked together to seize over 217,000 pounds of marijuana and nearly four metric tons of cocaine. The efforts have also resulted in the seizure of forty-seven vessels, eight aircrafts and six vehicles. Over 150 persons have been arrested.

The islands targeted in the "Blue Lightning" exercise were Exuma, Andros and Bimini. During the raids, U.S. Coast Guard vessels surrounded the islands while Bahamian forces boarded and searched the vessels. Drug Enforcement Agents and police carried out simultaneous searches in villages and remote island areas.

The effort required the combined forces of twenty-six agencies of both governments: over eighty-five law enforcement vessels: over thirty aircrafts: a half-dozen radar facilities and a total of more than 775 people.

On August 15, 1985 a similar type of operation called "Operation Thunderstorm" was initiated and was continued to September 8, 1985. A command post was set up at the U.S. Embassy's Drug Enforcement Agency. This command post was manned twenty-four hours continuously by the D.E.A., the Royal Bahamas Defence Force and the Police. As this was the second operation of its magnitude with U.S. involvement, all went quite smoothly and intelligence information was exchanged between the agencies. Seizures from the operation amounted to 87,200 pounds of marijuana, 750 kilos of cocaine, and 36 persons were arrested.

SERVEILLANCE EQUIPMENT - AEROSTAT BALLOON

In February of this year the Ministry of National Security issued a press statement on the success of the interdiction of the flow of dangerous drugs through the Commonwealth of The Bahamas as a direct result of the cooperative efforts of The Bahamas law enforcement agencies and the U.S. Drug Enforcement Administration.

The existence of the surveillance equipment in the northern Bahamas provides a screen for ships passing through that area and has proven to be a vital deterrent. What is required to block the entrance through The Bahamas to United States ports is another device in the southern Bahamas to curtail traffic coming from the south where countries are known to be exporting drugs. Moreover, because of the installation of the Aerostat in the northern Bahamas, drug traffickers have now shifted their routes to the southern Bahamas.

In order to cope more effectively, The Bahamas Government has decided to increase The Bahamas Police Strike Force capability in manpower, and transportation and communication equipment. The Bahamas government has reached an agreement with the U.S. Government for it to assist by providing air transportation (fixed wing aircrafts and helicopters) as well as some communication equipment to The Bahamas. A study team composed of Bahamaian and U.S. officials toured the southern Bahamas and identified a site on Exuma Island adjacent to the airport for the helicopter operations known as Operation Bat.

CONCLUSION

The Bahamas is fully committed to combating the scorge of the illicit drug trade within and outside its borders. It is cognizant of the ruinous effects on the populations of both of our countries. The policy of the Ministry of National Security in this regard is to spare no effort to accelerate its capability for the apprehension of the surveyors of this illicit trade.

The Government of The Bahamas supports the efforts of the Drug Enforcement Administration in cutting off the flow of drugs to the southern United States and with its fullest cooperation to the continuing joint exercises, and for the exchange of intelligence information and personnel.

The size and sophistication of the drug operation requires that a united front be mounted in the war on drugs. We pledge the cooperation of Bahamian Law Enforcement Agencies towards this end, and look forward to receiving the further support of our neighbours in the United States of America.

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CONNIE D. D'AMICO
Secretary to the Council

April 14, 1986

The Honorable Edward R. Roybal, Chairman
Subcomittee on Treasury--Postal Service
  and General Government
Committee on Appropriations
United States House of Representatives
Rayburn House Office Building, Room 2211
Washington, DC 20515

Dear Mr. Chairman:

I understand that your Subcommittee will be conducting hearings on April 16 covering the 1987 budget of the Office of Management and Budget (OMB) and I want to bring the thinking of this organization on this matter to your attention.

Since 1943 when the Federal Reports Act was passed, the Business Advisory Council on Federal Reports has been dealing with OMB--and before that with the old Bureau of the Budget--concerning the paperwork burden on business, deriving from the various forms, surveys, etc., disseminated by Federal government agencies. We focus especially on filing requirements affecting small business, where the impact is greatest.

Our experience has made us all too well aware that a lack of careful paperwork review results in innumerable examples of Federal information collections failing dismally to meet the Paperwork Reduction Act (PRA) requirements. This means, of course, that we are highly supportive of the paperwork review function of OMB's Office of Information and Regulatory Affairs (OIRA) and have supported, and do support, additional funding for this activity.

We understand that key members of the House have urged that $5.4 million earmarked for OIRA be deleted from the 1987 budget. This is of great concern to the Council. Such action would be devastating to what has provably been an effective effort on the part of OIRA to reduce the federal paperwork burden by enforcing PRA.

For that reason, given the current examination of OMB activities by your Subcommittee, the Business Advisory Council on Federal Reports and all of its members urgently appeal to your Subcommittee to assure adequate funding of the Office of Information and Regulatory Affairs.

Sincerely,

E. J. H.

Eugene J. Hardy
Chairman

EJH/bw

SUMMARY OF AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS TESTIMONY ON U.S CUSTOMS BUDGET FOR 1987

The American Association of Exporters and Importers (AAEI) is comprised of over 1000 company-members engaged in all aspects of international trade. Importing and exporting members, shippers, customhouse brokers, freight forwarders, and other member service firms interact daily with the U.S. Customs Service, making AAEI one of the closest observers of its operations.

Budget cuts mandated by Gramm-Rudman will directly result in the reduction of 770 positions in the Customs Service, futher exacerbating the current personnel shortages and delays in processing entries. Less resources and the increasing emphasis on drug interdiction to the detriment of the commercial side are factors straining Customs ability to facilitate international trade to the limit.

The proposals in the President's 1987 Budget for imposition of user fees by Customs on a broad range of functions are not a solution to budget deficits and reduced staffing. To impose a "user fee" for the privilege of paying the customs duties required to be deposited as a condition of entry of imported merchandise is analagous to charging a taxpayer a fee for filing an income tax return and paying income taxes.

The functions of the Customs Service are required by law, carried out by the government agency for the general welfare. As such, the cost of this operation should be borne by the general revenue and not by the taxpayer. The acceptance of entries of goods by Customs is not a desired service, but a requirement from which the "taxpayer" (importer) receives no benefit. It is true that the trade community has consistently asked for increased appropriations and staffing for Customs, but "user fees" are inappropriate when Customs is the second largest revenue producing agency and collects over 20 times the cost of operations in duties.

For all the foregoing reasons, AAEI wishes to register the objection of its nationwide membership to the concept of imposing user fees on the functions of a revenue producing agency and urges that these proposals be rejected as a means of reducing the budget deficit.

April 15, 1986

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

STATEMENT

of

the

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

before the

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON THE TREASURY,
POSTAL SERVICE AND GENERAL GOVERNMENT

of the

UNITED STATES HOUSE OF REPRESENTATIVES

April 15, 1986

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

April 15, 1986

The American Association of Exporters and Importers is a national organization comprised of approximately 1100 U.S. firms involved in every facet of international trade. Our members are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear, foodstuffs, automobiles, and wines. Association members are also involved in the service industries which serve the trade community such as customs brokers, freight forwarders, banks, attorneys and insurance carriers. AAEI is the closest observer of the U.S. Customs Service.

We are pleased to have this opportunity to address the U.S. Customs Service budget for Fiscal Year 1987. The funding for Customs' operations is of great concern to the Association, as many of our members deal with U.S. Customs on a day-to-day basis.

The Association and Customs have always dealt with eacn other in a direct and honest, if not always harmonious, manner. Due to this longstanding relationship, a relationship which is frequently of an advisory nature, the Association does not hesitate to point out problems to or ask questions of Customs. We believe both sides, as well as the public, greatly benefit from this exchange and we are pleased to say that, through discussion, many problems are resolved. This is not to say that we always reach a mutually satisfactory resolution. Indeed on many occasions we do not. We do not know whether Customs is satisfied with its level of staffing. In our opinion, however, the Service's resources are strained to the limit.

The problems faced by our members will be exacerbated dramatically by the cuts in the Customs' Budget for 1987 mandated by Gramm-Rudman. There are already drastic shortages in manpower in Customs ports around the nation. This fact was recognized last year by the Congress when it restored over 750 positions to the 1986 Customs Budget. Customs has said it will meet the requirements of Gramm-Rudman by again eliminating over 750 positions. Programs such as Customs Automation and development of a periodic entry system would help to make the Service more efficient but would only resolve part of the problem. AAEI believes that the Customs Service needs more trained personnel at appropriate levels of responsibility, now; mandated budget cuts would worsen the current shortages and delays caused by the lack of personnel. According to studies by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) Customs' budget would be reduced $34.4 million over the remainder of fiscal year 1986 (to September 30, 1986) as a result of Gramm-Rudman. Even though the Administration has resisted staffing increases in the past, the increase in Customs resources has directly led to increases in Customs revenue. A reduction in Customs resources has resulted and will continue to result in delays in processing entries and paperwork with a corresponding decrease in the quality of the work performed. Since Customs collects over $20 for each dollar it spends, a reduction in spending and manpower could lead to a decrease in revenue.

The shortage of manpower is complicated by another factor. The primary responsibility of the Customs Service has always been and should continue to be international trade. There is an unfortunate trend to view the Customs Service as a narcotic interdiction agency. While interdiction of narcotics is a worthwhile cause it is not the most efficient or correct use of the Customs Service's human and other resources especially when their commercial resources are strained to the limit. At present staffing and resource levels, Customs cannot be expected to continue as the major drug interdiction agency, the second leading revenue raiser, and at the same time to enforce the regulations of forty-odd other federal agencies. If the Service is expected to continue in each of these roles it must be given the resources to do so.

However, the imposition of user fees on passengers, vessels and commercial entries as proposed by the Administration is not the solution to low levels of staffing or the budget deficit. The Administration expects to raise $582.1 million through the collection of such fees.

The fees are intended to recover the cost of Customs Service operations. The U.S. Customs Service is a tax collection agency which also functions to regulate trade. In its collection capacity, its role is analagous to the role of the Internal Revenue Service in collecting income taxes. To impose a "user fee" for the privilege of paying the customs duties required to be deposited as a condition of entry of imported merchandise is analagous to charging a taxpayer a fee for filing an income tax return and paying income taxes. This is a concept which clearly would offend the tax paying public; it is no less offensive to the importing public.

The customs clearance of imported merchandise, inspection of goods, assessing duty, and ensuring it is not prohibited from importation by law or regulation, is not a "service" to the importer/taxpayer. It is an obligation of the Customs Service to the public to carry out these functions and to insure that the correct amount of customs duty is deposited, and that no law is violated by importation. These functions are no more a "service" to the importer than is the processing of an income tax return and collection of the income tax payable. In each case, the function is a requirement of the law, carried out by a government agency for the general welfare. As such, the cost of this operation should be borne by the general revenue and not by the taxpayer. In each case, it is not a desired service, but a requirement from which the taxpayer receives no benefit. AAEI agrees with the General Accounting Office which concluded, "GAO does not believe there is merit in assessing user's fees for those formalities that are not voluntary, because these formalities protect the nation as whole." GAO Report OC-9-85-1. The government's and NASA's requirement that a private U.S. concern pay a fee for the use of the space shuttle, to launch a satellite or in which to perform experiments, is an example of a valid user fee. The service is optional, requested by the private concern and directly benefits and profits that party, not the U.S. taxpayer.

It is true that the trade community has consistently asked Congress for larger appropriations for Customs. Year after year the workload on Customs personnel increases and year after year they support a budget that provides them with fewer resources and personnel, especially in the commercial operations area. However, it should be emphasized that the duties collected by the U.S. Customs Service far exceed the dollar outlay for its collection/inspection functions by a ratio of 20 to 1.

While the Customs Service has charged user fees for certain specified services since its inception in 1789, e.g. fees for vessel navigation, bonds for air and vessel passenger carriers, etc., the broad concept of attempting to recover the primary cost of operation of a revenue producing agency is unnecessary, improper, and objectionable.

If the United States were to implement a system of imposing fees for all or most of its functions, it would be perceived by our trading partners as an increase in duties, and a move toward greater protectionism. Our exporter members are concerned that other countries would be encouraged to impose similar fees on U.S. exports. It is also a matter of concern that the user fee charges for imports would be incompatible with the rules of the General Agreement on Tariffs and Trade, which requires that fees in connection with imports "shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." The Administration's proposal to collect user fees is undeniably for fiscal purposes. In fact, no cost analysis by any government agency has been made. The money collected from the user fees is earmarked for the general treasury, not a special fund to defray the costs of the customs service. Regardless of the intended purposes, the imposition of user fees is simply bad economic and trade policy.

Further, the proposal to impose user fees on imports is not consistent with the objective of Article VIII(b) of the GATT, that the contracting parties recognize the need for reducing the number and diversity of fees and charges. In addition, imposition of fees will add to the cost of imports, and would be inflationary.

The imposition of such user fees was not recommended by the President's Private Sector Survey on Cost Control, in the Report of the Task Force on User Charges. As pointed out therein by the Grace Commission (at page 196), Customs passenger processing and requirements for the formal and informal entry of merchandise are for the benefit of society as a whole. These functions protect the revenue, deter smuggling and the importation of contraband, and are necessary to enforce the laws. As further observed therein, the formal and informal entry of goods and entry by mail are services that support the general economy and for which a fee -- the duty on goods or postage -- has already been paid. These functions also serve as a protection for domestic industry.

In conclusion, the imposition of user fees on passengers, shippers and commercial entries is unfair, uneconomic, and violates existing international agreements. AAEI is convinced that their implementation will lead to constraint of trade, international retaliation and possible disruption of the normal flow of passengers and cargo. Together with the budget reduction, and corresponding staffing cuts mandated by Gramm-Rudman, user fees will be the 'straw which breaks Customs' back.'

Respectfully Submitted,

Eugene J. Milosh
President
American Association of
Exporters and Importers
11 West 42nd Street
New York, NY 10036

Statement of The Air Transport
Association of America
To The Subcommittee on Treasury, Postal
Service & General Government
Committee on Appropriations
U.S. House of Representatives
on the FY 1987 Appropriations
for the U.S. Customs Service
April 15, 1986

The Air Transport Association of America, which represents most of the scheduled airlines of the United States, appreciates this opportunity to make the following two observations with respect to the Fiscal Year 1987 appropriations for the U.S. Customs Service.

Single Customs Shift at Airports

The U.S. Customs Service has postponed, at least until October 1, 1986, its proposed reduction of tours of duty at U.S. airports to a single, standard shift from 8:00 a.m. to 5:00 p.m. If this proposal does go forward on October 1, clearance of aircraft, inspection of crew and passengers and their baggage, and processing of cargo and courier shipments will be crowded into one 9 hour period of time at U.S. gateway airports. The United States, in effect, will be closed down by Customs outside of these hours unless it agrees to pay its inspectors overtime to reopen the United States.

This makes no sense operationally or economically, and would inevitably result in serious international problems for our government and our flag carriers, including, at a minimum, very damaging retaliatory measures by other nations. We therefore respectfully request the Subcommittee to direct the Customs Service to take no action to implement this proposal, or any other, which will reduce the hours or levels of service currently provided by Customs at U.S. airports of entry.

In terms of its impact within this country, the Customs proposal should be permanently abandoned because:

- Long hours of inspector overtime will be required, reducing the efficiency and quality of the inspection process;
- Customs will require millions of dollars in additional appropriations to fund these overtime costs, and the $25,000 overtime cap on inspectors will have to be waived;
- Most peak 9 hour periods at major gateway airports do not coincide with the arbitrary 8:00 a.m. to 5:00 p.m. standard shift; and
- Crowding Customs inspectors at airports into a single arbitrary shift will result in a waste of manpower and in operating inefficiencies, even though some inspectors may be redeployed to other locations for other duties.

Revolving Fund for Customs User Fees

We understand that consideration is being given to an additional set of user fees which would raise over $300 million in revenues, covering commercial import transactions. As we have stated on many occasions in the past, we believe that such an imposition is inappropriate. However, should the Congress ultimately conclude that such fees are both necessary and consistent with GATT provisions (including all understandings that certain entries are to be free of such non-tariff barriers), we urge that explicit provision be made for the addition of the fee to the direct waybill rather than any master document, to ensure payment by the consignee, similar to the mandated entry on passenger tickets in the case of the existing fees.

In total, it is contemplated that cargo, passenger and sundry other fees would raise some $582 million in the first full year of implementation. Although the airlines have always opposed user fees on sound public policy grounds, we feel it is imperative that, if a schedule of fees is adopted, the revenues collected be expended for the purpose collected. This can be done by establishing a "revolving fund" to which fees would be remitted for expenditure by the Customs Service to augment its resources, and not to the general Treasury Fund. Moreover, in order to prevent the build-up of an unexpended, uncommitted surplus, such as the unconscionable status of the Aviation Trust Fund, provision should be made for a zero-balancing of the Customs fund every two or three years, entailing reduction or elimination of the fees until the surplus has been exhausted. To do otherwise is to make a mockery of the appelation "user fees".

Conclusion

The House subcommittee was instrumental in directing Customs to withdraw its announced plan to reduce hours of service at U.S. gateway airports to a single shift. The airlines are most appreciative of the action taken and commend the Chairman and the Subcommittee for it. We now urge that the single shift proposal be scrapped permanently by the Customs Service at the direction of the House and Senate Subcommittees.

We also solicit the support of the Subcommittee in establishing a zero-balancing revolving fund through which all user fees collected would be remitted directly to the Customs Service. Customs would in turn be obliged to provide adequate resources and staffing at airports, including at satellite airport terminals, to meet international traffic demands.

Continuing multi-shift schedules at airports and adoption of a revolving fund concept for any users fees which are imposed, plus streamlining and modernizing Customs formalities will help to posture Customs for its proper role in the closing years of the 20th Century, benefiting international air shippers and travelers alike. The alternative, as envisioned by the fortunately aborted single shift proposal, is a regression to the role contemplated for Customs by its now anachronistic 1911 statutory charter, adequate at best for an era of transportation by steamships.

* * *

Statement of the Distilled Spirits Council of the United States, Inc. regarding Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms Appropriations

Presented to the Committee on Appropriations,
Subcommittee on Treasury, Postal Service and
General Government, United States Senate

April 16, 1986

The Distilled Spirits Council of the United States, Inc. ("DISCUS") represents the manufacturers and importers of approximately 85% of the distilled spirits produced and sold in the United States.

We request that the FY 87 Treasury Appropriations bill carry language contained in prior continuing resolutions and appropriations bills addressing ingredient labeling of alcohol beverages. It is a matter of importance to the distilled spirits industry and to members of the Senate and House who are concerned with elimination or reduction of government waste. When this Subcommittee has addressed the issue in the past, it has correctly expressed the view that ingredient labeling requirements should not be imposed unless and until the litigation of the matter under the Federal Alcohol Administration Act is concluded.

Chairman Abdnor articulated Congressional intent very precisely and cogently:

> "to suspend the ideological tug of war over which way we ought to go on new ingredient labeling requirements until all litigation on the issue is complete. BATF has expended a good deal of its time and scant resources on this question over the past 10 years, going one way under the previous administration and another way under the current one. We just do not think it is good management to pursue the broad ingredient labeling issue until the courts have fully clarified both BATF's jurisdiction and legal obligations under the Federal Alcohol Administration Act." (131 Cong. Rec. 12,106 (daily ed. Sept. 25, 1985))

We believe that it is important for the Subcommittee to continue to express the intent of Congress to prohibit the use of BATF funds to implement the ingredient labeling rule until the litigation is concluded.

1. Cost to the Government.

The United States Court of Appeals for the District of Columbia Circuit currently is considering the result of the latest rulemaking conducted by BATF involving the propriety of ingredient labeling. The appeal is being taken from the District Court's order, dated October 30, 1985, which directed that a previous ingredient labeling rule become mandatory not later than six months from the date of the Court's order. The Court of Appeals has stayed the District Court order pending appeal.

One purpose of the restriction in the Continuing Resolution is to prevent BATF from wasting limited resources to carry out a lower court order until litigation of the issue including appeals and remands, is completed. It would be wasteful for BATF to expend funds in setting up enforcement mechanisms, and providing extensive guidance to the implementation of a rule full of ambiguity until the litigation is completed. The costs to BATF of implementing the District Court's order would be substantial. The Associate Director of BATF described in an affidavit filed with the District Court in November 1985 the work of the agency's personnel in approving spirits, wine, and beer labels. The task would be considerable and the effort might be entirely wasted.

2. Cost to Industry.

The cost to industry also would be enormous. DISCUS has made careful estimates of the cost of implementing the rule -- separate from the continuing annual cost of compliance. We estimate that as of December 1985 the cost of implementation would have been $50.96 million for the distilled spirits industry alone. That estimate is for an orderly implementation with at least one year of lead time. The industry would have to redesign thousands of front and back labels, install new equipment or modify old equipment, design and produce new bottle molds, implement numerous new administrative recordkeeping procedures, undertake additional product laboratory analysis, and incur additional labor expenses related to labeling, recordkeeping, and product handling.

When BATF ordered implementation of shotgun ingredient labeling in 1980, it granted a full two and a half year phase-in period. Our cost estimates assume an orderly implementation schedule for the industry of at least twelve months. Any shorter time period would result in substantially higher implementation cost than $50.96 million because: (1) the major overtime expenses which would have had to be paid to personnel working at a crisis pace; (2) the premium which would have to be paid to the limited number of industry suppliers of new labels and bottles ordered on such short notice; (3) the waste of millions of labels and bottles which could not be used; and (4) the burdens in educating foreign suppliers in foreign languages about technical matters and assuring their compliance with the new rule.

If necessary equipment changes could not be made in time and hand application of extra strip labels with ingredient information were required, the cost of implementation and first year of operation would be $198.98 million in 1983 for the distilled spirits industry alone. This estimate was filed by DISCUS in 1983 in response to an order of the Court of Appeals requesting comment on a suggestion from the Center for Science in the Public Interest that the use of strip labels would be inexpensive and simple and could be done quickly. Please see DISCUS memoranda filed with the Court of Appeals, dated June 24, 1983; August 3, 1983; August 19, 1983; and November 27, 1985, which set forth ingredient labeling cost data, attached hereto.

We submit that it is unwise and unnecessary to place this burden on an already financially troubled industry until the litigation is completed and we know what rule, if any, will be imposed on the industry.

3. Health Claim.

The Center for Science in the Public Interest ("CSPI") has claimed that a failure to implement ingredient labeling immediately will cause serious harm to the public health. Such claims are simply untrue.

The record from BATF's four rulemakings contains no medical support for such a claim. The record is replete with medical and scientific evidence that any allergenic components of the basic ingredients of distilled spirits do not carry over in distillation of the alcohol to the final product. The record is virtually devoid of concrete evidence supporting CSPI's alleged health benefits of ingredient labeling.

In its most recent rulemaking BATF decided to rescind a previous rule which would have required shotgun ingredient disclosure, finding that labeling based on standards of identity provided proper protection of the public and that shotgun labeling would provide the public with misleading information, including the implication that grains and yeast which go into alcohol production carry nutritional value in the final product. BATF decided to require disclosure of FD&C Yellow No. 5 on labels because of possible effects on the health of a certain percentage of the population. BATF also announced that it would evaluate the need to disclose other ingredients on a case-by-case basis.

The agency has been pursuing label disclosure rulemakings for other ingredients or additives. It recently required label disclosure of saccharin and has under way a rulemaking by which it proposes to require labeling of sulfites. The language we request appear in the appropriations bill would in no way affect BATF's ability to go forward with the sulfite rulemaking and other rulemakings it might wish to undertake.

4. Recent Legislative History.

Soon after BATF published proposed regulations in 1979 the House Appropriations Committee stated its position in the ingredient labeling matter:

> "On February 2, 1979 the Bureau published in the Federal Register several proposed regulations which would require the ingredient labeling of alcoholic beverages. The Committee believes that these proposed regulations represent another unnecessary burden on United States industry, the cost of which is passed on to the consumer. The Committee has, therefore, inserted language in the accompanying bill which would prohibit the use of any funds appropriated to the Bureau for issuing or carrying

out any of the proposed regulations." (H.R. Rep. No. 96-248, 96th Congress, 1st Sess. 10 (1979))

In 1983 the House stated the view that the courts should have the opportunity to make a final decision on this matter before the regulations were implemented. Because a Treasury Appropriations Bill was not enacted that year, this language was eventually incorporated into the Continuing Resolution for Fiscal Year 1984. The prohibition was maintained in the Continuing Resolutions for Fiscal Years 1985 and 1986. (Pub.L. No. 99-103, 99 Stat. 471 (Sept. 30, 1985); H.J. Res. 441, 131 Cong. Rec. S15295 (daily ed. Nov 13, 1985; P.L 99-190))

In short, Congress has clearly and consistently expressed the view that the courts should have the opportunity to review the regulations under the Federal Alcohol Administration Act prior to the time that they are implemented. We request that this sensible approach be continued.

Conclusion:

For the reasons of (1) sound management of government expenditures and (2) avoidance of an expensive and wasteful burden on businesses and alternatively on consumers, we believe it is important for the Subcommittee to continue to prohibit the use of funds to implement the 1980 ingredient labeling rule (T.D. ATF-66) until there is a conclusion of all judicial and rulemaking proceedings. We respectfully request that the Subcommittee take our request into account during its upcoming mark-up.

DISCUS TESTIMONY
REGARDING
CONTINUED MONTHLY
COLLECTION OF
BATF STATISTICS

TREASURY APPPOPRIATIONS
SUBCOMMITTEE
APRIL 16, 1986

The Distilled Spirits Council of the United States, Inc., on behalf of the beverage alcohol industry, urges the committee to continue to require that BATF collect and publish statistics on distilled spirits on a monthly rather than quarterly basis, as has been proposed by the Office of Management and Budget (OMB). Any reduction in the frequency of these reports would hinder the ability of DISCUS and its member companies to market, plan and focus on industry problems, including problems of alcohol abuse. Timely statistics are especially needed for the operations of a strongly regulated industry such as ours, which has significant social responsibilities and which collects over $12.6 billion annually in taxes on behalf of local, state, and the federal government.

Monthly statistics are needed and quarterly statistics are insufficient because:

- monthly statistics advance efficient industry operations by providing current information on distillation, bottling and other industry developments -- information essential for making timely company decisions. Quarterly statistics would be months late for usefulness in reaching important decisions;
- planning of future production and marketing depends on monthly statistics rather than stale, historical data;
- inventory, accounting and company records must be related to current, monthly statistics;
- errors would be difficult to detect and correct in quarterly reports.

In summary, quarterly statistics could mask important changes and would be too late for making decisions and plans. Monthly data are vital as a guide to the future for our industry and for others affected by our industry.

DISCUS understands that a need for statistics by government must be shown to justify their collection. Also, we understand that an objective of OMB's Paperwork Reduction Program is to lighten the burden on those who supply raw materials for these statistics. We would like to assure you that our industry gladly assumes this "burden" and asks not to be relieved. It welcomes the "burden" in the interest of advancing the industry's operations and its marketing and social responsibilities.

Additionally, we are informed that government agencies responsible for controlling our industry require these statistics to, among other things, determine satisfaction of excise tax liabilities, prevent illegal production and provide the basis for various inspection programs.

Because we believe that collection of monthly statistics is in the public interest since it makes current data available for an important social industry - an industry that makes substantial contributions to government revenues and the U.S. economy - DISCUS requests that your Subcommittee include language in its report that would mandate the continued monthly collection of statistics by BATF during fiscal year 1987, notwithstanding any OMB directive to the contrary.

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